145B21

# THE HISTORY

OF

# THE LAWS AND COURTS

OF

# HONGKONG,

TRACING CONSULAR JURISDICTION IN CHINA AND JAPAN AND INCLUDING PARLIAMENTARY DEBATES, AND THE RISE, PROGRESS, AND SUCCESSIVE CHANGES IN THE VARIOUS PUBLIC INSTITUTIONS OF THE COLONY FROM THE EARLIEST PERIOD TO THE PRESENT TIME.

*WITH ILLUSTRATIONS.*

BY

JAMES WILLIAM NORTON-KYSHE,
OF LINCOLN'S INN, ESQUIRE, BARRISTER-AT-LAW,
*Registrar of the Supreme Court of Hongkong.*

IN TWO VOLUMES.

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John Smale

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"A collection of records may be the result of professional knowledge, research, and skill, just as a collection of curiosities is the result of the skill and knowledge of the antiquarian or *virtuoso*."—*Bowen*, L. J., Lyell *v.* Kennedy, L. R. 27 Ch. D. 31.

TO

HIS HONOUR

SIR JOHN WORRELL CARRINGTON, KNT., C.M.G.,

CHIEF JUSTICE OF HONGKONG.

etc., etc., etc.,

THIS WORK

IS, WITH PERMISSION,

**Respectfully Dedicated.**

# PREFACE.

WONDERFUL as may be said to have been the courage, tenacity, and determination with which our people and Government have successfully established themselves in this *Ultima Thule* of the Empire for the benefit of all mankind, not less remarkable may be said to have been that branch of the service connected with the administration of justice in Hongkong. Placed on the borders of an Empire so full of contradictions as China, with its uncontrolled millions, conservative and prejudiced to the backbone, a people totally ignorant and indifferent as to Western ideas or modes of Government, it seems as if Hongkong by its position had been destined to become the starting point from whence a civilizing power by its beneficent rule and humane laws was to endeavour to effect those reforms which an uncivilized power like China was ever in need of. It is not astonishing, therefore, situated as is Hongkong, with a population recruited almost from the dregs of society, that enormous difficulties should have been experienced from the very outset in establishing a proper form of Government in the Colony; tentative measures being introduced to be only shortly after modified or rejected. The unquestionable records upon which this work has been founded amply testify to that fact. The necessary control by the Executive in the early days over the administration of justice before the grant of a Charter to the Colony, and its failure afterwards in continuing to exercise any influence over highly cultured and intellectual officials charged with the same administration, where-

ants to be expected in the progressive stage of a Colony rising from its tutelage. The suspension of Mr. John Walter Hulme, the first Chief Justice, by Sir John Davis, the Governor, only to be afterwards reinstated by the Secretary of State, will not, in that respect, fail to prove of interest. Nor will the sad fate of Mr. Thomas Chisholm Anstey, the Attorney-General, than whom a more able, energetic, and honourable gentleman never held similar position in Her Majesty's Colonies, escape attention. Baffled from the first in his determination to effect reforms under a weak Governor, Sir John Bowring, Mr. Anstey precipitated his downfall by running counter to the policy of the latter, who, acting under the unfortunate advice and influence of Mr. Mercer, the Colonial Secretary, favoured a friend of the latter, Dr. Bridges, whom he elevated to high positions to be afterwards found unfit for the trust which had been reposed in him. During the time he held office in Hongkong, whatever his faults, temperament, or Quixotic disposition at times, which, it may be added, have not escaped notice in this work wherever necessary, Mr. Anstey did an enormous amount of good, especially in his attempt to put down official corruption then so rampant, and his praiseworthy and successful endeavours, at all risks to himself, to rid the public service of Mr. D. R. Caldwell, the influential Registrar-General and Protector of Chinese, whom a previous Commission had rehabilitated, may be counted among the many redeeming features never to be effaced from his career in Hongkong.

A question not seldom mooted has been the fitness of English law for the Government of the Chinese. Lord Derby, when Secretary of State for the Colonies, in a despatch to the first Governor of Hongkong, stated "that to the Chinese, the laws and customs of England would be a rule of action and a measure of right equally unintelligible and vexatious." That the

Chinese acquiesce in our laws and fully admit their beneficence is an incontestable fact which will be found fully set out in this work. Upon that point, however, it may be safely asserted that not merely free trade, but the equal justice of our laws, dealing alike with native and with European, have drawn to the Colony a population upon whom our commerce is entirely and absolutely dependent for support, and it may be reasonably inferred therefore that had any departure from this course been attempted, although evidence is not wanting as to what was originally intended in that respect, it would probably have deterred emigration if not driven away many already settled in the Island. English law, therefore, if not absolutely fitted for natives, especially as regards the clemency and technicalities of our criminal procedure, was the only law expedient to put into practice in a Crown Colony settled essentially under British rule, like Hongkong, and therefore differing from a conquered place with its already established laws and customs.

In other respects it is doubtful if the administration of any Colony presents more food for reflection than that of Hongkong. The reader will draw his own conclusions from "that mass of mud"* in reference to which the Duke of Newcastle showed so much anxiety at the time.

The Consular Courts were not also without giving dissatisfaction in their working,—a matter which will be found fully dealt with. The long distance separating these Courts from head-quarters, which in the early days centred in the Supreme Court of Hongkong, was not without its inevitable drawbacks, and these, taken together with the law's delays and uncertainties, not infrequently engendered miscarriages of justice, inducing *The Times*, rather ungenerously, to characterise the Court as

* See Chap. XXXI., *infrà*, p. 612.

"*the greatest nuisance in the East*,"* in ignorance of the utter irresponsibility of the Supreme Court in such matters and of the undoubted good, which, acting independently, it was instrumental in effecting. The lawlessness of British subjects in days gone by in places where law and justice, such as we understand them, were ever unknown quantities called for reprisals which in these days of quick steam and telegraphy and extended consular jurisdiction fortunately no longer exist. But that in other respects a great deal has been done no one at all acquainted with such a people as the Chinese can deny. Otherwise the purport of this work lies in its title, and its contents will disclose that which it portends to be,—a record of facts scrupulously set out with accuracy and fidelity.

The manners and customs of the Chinese, in so far as they have been elicited by the Courts, will also be found duly recorded.

A list of the Chief Justices, Judges, Attorneys-General, and Crown Solicitors from the date of the Charter granted to the Colony with the dates of their assumption and relinquishment of duties, and a list of Barristers and Attorneys of the Court from the earliest period, together with a copious Index,—necessary attributes to a work of this dimension—will be found in their proper places.

The work, necessarily arduous, has not been prepared without considerable trouble, and the author begs to express his obligations to the Honourable the Chief Justice, Sir John Carrington, for much kindness and consideration shown to him during the entire progress of the work, and, with His Honour's permission, it is now respectfully inscribed to him.

J. W. NORTON-KYSHE.

The Supreme Court,
Hongkong, 30th September, 1898.

* Vol. II., Chap. XXXIX. § 1., *infrà*, p. 58.

# APPENDICES.*

* Here inserted for facility of reference.

# APPENDIX I.

## Lists of Chief Justices and Judges of Hongkong, from the date of the Charter of the Colony, in 1843.*

### Chief Justices.

| Name. | Date of Assumption of Office. | Date of final Departure from the Colony. | Remarks. |
|---|---|---|---|
| 1. John Walter Hulme..... | 7th May, 1844. | 24th April, 1859. | |
| 2. William Henry Adams... | 25th August, 1860. | 13th May, 1865. | |
| 3. John Jackson Smale..... | 24th October, 1866. | 9th April, 1881. | See List of Attorneys-General, *infrà*. |
| 4. George Phillippo ..... | 13th March, 1882. | 5th April, 1887. | |
| 5. James Russell ..... | 5th October, 1888. | 23rd March, 1892. | |
| 6. Fielding Clarke..... | 11th June, 1892. | 15th January, 1896. | |
| 7. John Worrell Carrington. | 13th May, 1896. | | |

### Judges. †

| Name. | Date of Assumption of Office. | Date of final Departure from the Colony. | Remarks. |
|---|---|---|---|
| 1. Henry John Ball ..... | 7th July, 1862. | 26th June, 1873. *a* | *a* Was Judge of the Court of Summary Jurisdiction; died in Hongkong, 1st April, 1883. |
| 2. Francis Snowden § ..... | 12th May, 1874. | ... | |
| 3. James Russell ..... | 10th August, 1883. | ... | |
| 4. Fielding Clarke..... | 25th March, 1889. | ... | |
| 5. Edward James Ackroyd. | 3rd December, 1892. | 6th March, 1895. | |
| 6. Alfred Gascoyne Wise ... | 22nd October, 1895. | | |

* The information given in these lists is taken from Court Records. Acting appointments are not included therein, but will be found in the body of the work, as well as other data in regard to the officers whose names here figure.

† Under Ordinance No. 7 of 1862, a Judge of the Court of Summary Jurisdiction was appointed, until the passing of Ordinance No. 14 of 1873, when that Court was abolished and a Puisne Judge appointed—see Vol. II., Chap. LX. § I., pp. 223-224.

§ First Puisne Judge constituted under Ordinance No. 14 of 1873—see Vol. II., Chap. LXII. § I., p. 223.

# APPENDIX II.

## Lists of Attorneys-General and Crown Solicitors of Hongkong, from the date of the Charter of the Colony, in 1843.*

### Attorneys-General.

| Name. | Date of Assumption of Office. | Date of final Departure from the Colony. | Remarks. |
|---|---|---|---|
| 1. Paul Ivy Sterling ..... | 28th July, 1844. | 15th April, 1855. | |
| 2. Thomas Chisholm Anstey | 30th January, 1856. | 30th January, 1859. | |
| 3. William Henry Adams... | 7th September, 1859. | ... | Appointed acting Chief Justice on his arrival, never assumed the duties of Attorney-General--see List of Chief Justices *supra*, and *infra*, Ch. xxix. |
| 4. John Jackson Smale..... | 22nd April, 1861. | ... | See List of Chief Justices, *supra*. |
| 5. Julian Pauncefote..... | 21st July, 1866. | 4th December, 1873. | |
| 6. John Bramston ..... | 16th February, 1874. | 22nd July, 1876. | |
| 7. George Phillippo ..... | 2nd January, 1877. | 1st February, 1879. | See List of Chief Justices, *supra*. |
| 8. Edward Loughlin O'Malley .. | 21st February, 1880. | 18th February, 1889. | |
| 9. Wm. Meigh Goodman ... | 15th March, 1890. | | |

### Crown Solicitors.

| Name. | Date of Assumption of Office. | Date of final Departure from the Colony. | Remarks. |
|---|---|---|---|
| 1. J. J. Hickson ..... | 1st December, 1856. | 6th February, 1857. | |
| 2. George Cooper-Turner ... | 6th February, 1857. | ... | Died at Shanghai, 2nd February, 1861. |
| 3. Francis Innes Hazeland.. | 8th February, 1861. | ... | Died in Hongkong, 21st January, 1871. |
| 4. Edmund Sharp ..... ..... | 25th January, 1871. | 5th May, 1883. | |
| 5. Alfred Bulmer Johnson .. | 5th May, 1883. | 17th December, 1896. | |
| 6. Henry Lardner Dennys .. | 1st December, 1896. | | |

* The information given in these lists is taken from Court Records. Acting appointments are not included therein, but will be found in the body of the work, as well as other data in regard to the officers whose names here figure.

# APPENDIX III.

## Roll of Barristers admitted to practise before the Supreme Court of Hongkong*

| No. | Date of Admission. | Name. | Remarks. |
|---|---|---|---|
| 1 | 1844—1st October† ... | Paul Ivy Sterling ..... | Called to the Irish Bar, Michaelmas Term, 1829; was the first Attorney-General of the Colony. |
| 2 | 1844—1st October† ... | Henry Charles Sirr ..... | Called to the Bar at Lincoln's Inn, 22nd November, 1833. |
| 3 | 1846—10th December | Charles Molloy Campbell..... | Of the Middle Temple, called 22nd November, 1844; was acting Attorney-General and acting Chief Justice—see History, *infrà*. |
| 4 | 1851—15th April ..... | William Thomas Bridges..... | Of the Middle Temple, called to the Bar, 5th November, 1847—see History, *infrà*. |
| 5 | 1854—15th December | Thomas Pousonby‡ ..... | Of Gray's Inn and of the four Courts in Ireland; called to the Irish Bar in Hilary Term, 1842. |
| 6 | 1855—4th January ... | Frederick William Green ..... | Of Oriel College, Oxford, B.A., and of the Inner Temple, called 30th January, 1852. |
| 7 | 1855—28th February. | Henry Kingsmill, Junior ..... | Was of the Irish Bar. Elected in conformity with the provisions of Ordinance No. 13 of 1862, on the 4th January, 1865, to act as a barrister only—see History, *infrà*. |
| 8 | 1855—30th October... | John Day ..... | Of the Middle Temple, called 23rd November, 1849. |

* For further information concerning this list or for individual barristers in the list, *vide* History, *infrà*.
† The date of the opening of the Supreme Court.
‡ Ceased practising in March, 1855. Had previously served in the Navy.

## APPENDIX III,—*Continued.*

### Roll of Barristers admitted to practise before the Supreme Court of Hongkong—*Continued.*

| No. | Date of Admission. | Name. | Remarks. |
|---|---|---|---|
| 9 | 1859—14th April..... | Edward Hutchison Pollard ... | Of the Middle Temple, called Easter Term, 1858—see List of Proctors, Attorneys, etc., *infrà*—elected in conformity with the provisions of Ordinance No. 13 of 1862, on the 4th January, 1865, to act as a barrister only—see History, *infrà*. |
| 10 | 1861—22nd January .. | Roger Carmichael Robert Owen | Of St. John's College, Cambridge, and of the Inner Temple—called to the Bar, 30th April, 1853. Under the provisions of Ordinance No. 13 of 1862, elected to act as an attorney, etc., only—see List of Proctors, Attorneys, etc., *infrà*. |
| 11 | 1862—9th May..... | Julian Pauncefote..... | Of the Inner Temple—called to the Bar 4th May, 1852; was afterwards Attorney-General of the Colony. In conformity with the provisions of Ordinance No. 13 of 1862, elected to act from the 5th January, 1865, as a barrister only. |
| 12 | 1862—18th November. | John Jackson Smale..... | Of Lincoln's Inn, called Michaelmas Term, 1856—previously a solicitor; was Attorney-General of the Colony, afterwards Chief Justice. When Attorney-General elected, under Ordinance No. 13 of 1862, to act as a barrister only. |
| 13 | 1862—11th December . | John Lindsay Reed ..... | Of the Inner Temple, called 26th January, 1853; was also an Advocate of the High Court of Calcutta. |

ROLL OF BARRISTERS ADMITTED TO PRACTISE BEFORE THE SUPREME COURT OF HONGKONG—*Continued.*

| No. | Date of Admission. | Name. | Remarks. |
|---|---|---|---|
| 14 | 1863—3rd June ..... | Henry Jefferd Tarrant ..... | Called at the Middle Temple, 12th November, 1859 ; previously an attorney of the Court,—see List of Proctors, Attorneys, etc., *infrà*—afterwards proceeded to Rangoon to practise and acted at one time as Recorder of Moulmein. |
| 15 | 1863—26th June ..... | Philip Albert Myburgh ..... | Of the Inner Temple, called 17th November, 1862 ; practised afterwards in Shanghai and took up Admiralty practice in England ; Q.C., 1882, and a Bencher of the Inner Temple—see History, *infrà*. |
| 16 | 1865—13th November | Richard Temple Rennie ..... | Of the Inner Temple, called 6th June, 1860. Entered the Consular Service and retired in 1891 as Chief Judge of the Supreme Court of China and Japan. |
| 17 | 1866—8th February... | William Henry Mitchell ..... | Of Lincoln's Inn, called 9th June, 1865 ; previously in the Hongkong Government Service ; practised in Shanghai—see History, *infrà*. |
| 18 | 1866—25th May ..... | Frederick James Barnard..... | Of St. John's College, Cambridge, and of the Middle Temple, 17th November, 1864 ; practised also before the Supreme Court of China and Japan ; was an advocate of the High Court of Bombay. |
| 19 | 1866—20th December | John Charles Whyte ..... | Of the Irish Bar, called in Michaelmas Term, 1847 ; was previously Police Magistrate and resigned to take to private practice in February, 1867—see History, *infrà*. |

## APPENDIX III,—*Continued.*

ROLL OF BARRISTERS ADMITTED TO PRACTISE BEFORE THE SUPREME COURT OF HONGKONG—*Continued.*

| No. | Date of Admission. | Name. | Remarks. |
|---|---|---|---|
| 20 | 1868—29th January | Thomas Child Hayllar..... | Of St. John's College, Cambridge, and of the Inner Temple; called 6th June, 1861; previously an advocate of the High Court of Bombay—see History, *infrà*. |
| 21 | 1868—2nd March..... | Nicholas John Hannen ..... | Of University College, London, and of the Inner Temple; called 6th June, 1866; practised in Shanghai and afterwards joined the Consular Service. In 1896 was Consul-General at Shanghai and Judge of the Supreme Court of China and Japan. |
| 22 | 1871—16th February | James Layton Brown ..... | Of Lincoln's Inn; called Trinity Term, 1870; was Deputy Commissioner of Chinese Customs at Canton. |
| 23 | 1871—18th November | Wm. Venn Drummond..... | Of Lincoln's Inn; called Hilary Term, 1870; joined the Shanghai Bar. |
| 24 | 1872—28th November | Alfred Percival Handley ..... | Of the Middle Temple; called 30th April, 1872. |
| 25 | 1873—4th July..... | Hormusjee Pestonjee ..... | Of Lincoln's Inn; called Hilary Term, 1871. |
| 26 | 1876—28th August ... | James Russell ..... | Of Queen's University, Ireland; and of Lincoln's Inn; called 30th April, 1874; originally a cadet in the Hongkong Civil Service; became Chief Justice, 1888—see History, *infrà*. |
| 27 | 1877—16th March ... | John Joseph Francis ..... | Of Gray's Inn; called 17th November, 1876; previously practised as a soli- |

ROLL OF BARRISTERS ADMITTED TO PRACTISE BEFORE THE SUPREME COURT OF HONGKONG—*Continued.*

| No. | Date of Admission. | Name. | Remarks. |
|---|---|---|---|
| 28 | 1877—18th May ..... | Ng Choy ..... | Of Lincoln's Inn ; called 31st January, 1877—see History, *infrà*. |
| 29 | 1880—19th April ..... | Ernest Mackean ..... | Of the Inner Temple ; called 17th November, 1876. |
| 30 | 1880—30th April ..... | Robert Alex. Milligan Hogg. | Of the Inner Temple ; called 26th January, 1877 ; previously in practice as an advocate in Griqualand West, South Africa. |
| 31 | 1881—13th January... | Patrick Rose Smith ..... | Of the Inner Temple ; called 7th May, 1879. |
| 32 | 1882—23rd February | Herbert Mainwaring Baily... | Of Brasenose College, Oxford ; called at Lincoln's Inn, 9th June, 1880. |
| 33 | 1882—29th March ... | Ho Kai ..... | Of Lincoln's Inn ; called 1st February, 1882 ; is a Bachelor of Medicine of Aberdeen University and a member of the Royal College of Surgeons of England—see History, *infrà*. |
| 34 | 1883—24th January ... | Alfred Gascoyne Wise..... | Of Lincoln's Inn ; called 26th January, 1878 ; now Puisne Judge, Hongkong —see History, *infrà*. |
| 35 | 1884—6th May ..... | James Rochfort Maguire..... | M. A., Fellow of All Soul's College, Oxford, and of the Inner Temple, (*1st class studentship Trin.* 1879) ; called 26th January, 1883 ; was Private Secretary to Sir George Bowen, Governor of Hongkong. |
| 36 | 1885—12th February | Andrew John Leach..... | Of St. John's College, Oxford, B.A., and of Lincoln's Inn ; called 17th November, 1876 ; now a Puisne Judge in the Straits Settlements. |

## APPENDIX III,—*Continued.*

ROLL OF BARRISTERS ADMITTED TO PRACTISE BEFORE THE SUPREME COURT OF HONGKONG—*Continued.*

| No. | Date of Admission. | Name. | Remarks. |
|---|---|---|---|
| 37 | 1886—2nd December | Wm. Henry Brereton ..... | Of the Middle Temple; called 17th June, 1885; previously practised as a solicitor in the Colony—see List of Proctors, Attorneys, etc., *infrà*. Died in Hongkong, 24th October, 1887, aged fifty-nine years. |
| 38 | 1888—5th January ... | Edward Robinson ..... | Of Gray's Inn: called 26th January, 1881; had practised in Shanghai. |
| 39 | 1888—5th April ..... | Henry Edward Pollock ..... | Of the Inner Temple; called 17th November, 1887. |
| 40 | 1888—22nd October... | Wei Pui ..... | Of the Middle Temple; called 25th April, 1888. |
| 41 | 1889—25th November | George Jekyll Phillippo ..... | Of Downing College, Cambridge, B.A., and of the Inner Temple; called 18th November, 1889. |
| 42 | 1890—11th August ... | Harold Catmur Brushfield .... | Of the Middle Temple: called 22nd June, 1887. |
| 43 | 1894—2nd April ..... | Ernest Hamilton Sharp ..... | M. A., B. C. L., Oxford, and of the Inner Temple; called 22nd April, 1891; also practised in Shanghai. |
| 44 | 1895—20th April..... | Duncan McNeill ..... | Of the Inner Temple; called 18th November, 1889. |
| 45 | 1895—14th November | Charles Alex. Dick Melbourne | Of Trinity College, Cambridge, and of the Inner Temple; called 17th November, 1891. |
| 46 | 1897—11th February | Marcus Warre Slade..... | Of New College, Oxford, B.A., and of the Inner Temple; called 10th June, 1891. |

## Roll of Proctors, Attorneys, and Solicitors admitted to practise before the Supreme Court of Hongkong.*

| No. | Date of Admission. | Name. | Remarks. |
|---|---|---|---|
| 1 | 1844—1st October† ... | Edward Farncomb ..... | Was a solicitor in Chancery and attorney of the Queen's Bench in England. |
| 2 | 1845—13th January... | William Henry Goddard ..... | Was a solicitor in Chancery and attorney of the Queen's Bench in England; —first admitted for 3 months from 13th January, 1845, and again from 20th March and as a Notary Public. |
| 3 | 1845—13th January... | William Tarrant ..... | Was in the merchant service; was admitted for three months, at the expiry of which he entered the Government Service—see History, *infrà*. |
| 4 | 1845—1st May ..... | Percy Caulaincourt McSwyney | Previously Deputy-Registrar of the Supreme Court; first admitted for three months from 1st May, 1845.<br>(2) re-admitted till 19th September, 1845.<br>(3) ———— for three months from 3rd November, 1845.<br>(4) ———— 1st May, 1846.<br>(5) ———— 2nd November, 1846.<br>(6) ———— 1st May, 1847.<br>(7) ———— six weeks from 2nd August, 1847.<br>(8) ———— to practise in those cases only which he had commenced before 2nd November, 1846, from 15th September to 6th November, 1847, and no longer—see History, *infrà*. |

* For further information concerning this list or names therein, see History, *infrà*.

† The date of the opening of the Supreme Court: had previously practised in the Colony before the different Courts, see History, *infrà*.

ROLL OF PROCTORS, ATTORNEYS, AND SOLICITORS ADMITTED TO PRACTISE BEFORE THE SUPREME COURT OF HONGKONG—*Continued.*

| No. | Date of Admission. | Name. | Remarks. |
|---|---|---|---|
| 5 | 1846—29th July ..... | Norcott D'Esterre Parker..... | Attorney of the Courts of Queen's Bench, Exchequer, and Common Pleas in Ireland—also a Notary Public—*see* History, *infrà*. |
| 6 | 1846—2nd November.. | Richard Coley ..... | Attorney of the Court of Queen's Bench and a Solicitor of the High Court of Chancery in England. |
| 7 | 1846—2nd November.. | William Gaskell ..... | Attorney of the Court of Queen's Bench and a Solicitor of the High Court of Chancery in England—*see* History, *infrà*. |
| 8 | 1849—4th July..... | William D'Esterre Parker ... | Attorney of Her Majesty's Court of Exchequer in Ireland, admitted Trinity Term, 1839. |
| 9 | 1850—23rd January... | Edward Hutchinson Pollard... | Had been previously clerk to Mr. R. J. Want; an attorney of the Supreme Court of New South Wales; arrived in the Colony in September, 1847, and shortly after became Judge's Clerk for six months, and on the expiry of that period joined the office of Mr. N. D'E. Parker as an articled clerk: was now admitted for three months only but re-admitted every three months until the 6th September, 1853, when, owing to there being a sufficient number of attorneys in the Colony, he was allowed "to wind up all suits, actions, and business, instructions for which have been received by him, on or before the 6th December, 1853." Mr. Pollard was afterwards called to the Bar in England by the Honourable Society of the Middle Temple, in Easter Term, 1858, and admitted locally on the 14th April, 1859—see List of Barristers, *suprà*. On the 4th January, 1865, Mr. Pollard elected under the provisions of Ordinance No. 13 of 1862, to act as a barrister only—see also History, *infrà*. |
| 10 | 1850—18th February | William Moresby | Attorney of the Courts of Queen's Bench, Exchequer, Common Pleas and |

ROLL OF PROCTORS, ATTORNEYS, AND SOLICITORS ADMITTED TO PRACTISE BEFORE THE SUPREME COURT OF HONGKONG—*Continued.*

| No. | Date of Admission. | Name. | Remarks. |
|---|---|---|---|
| 11 | 1851—17th March..... | Henry Jefferd Tarrant ..... | Admitted after examination. Had been an articled clerk to Messrs. Coley and Gaskell. On the 7th November, 1859, this attorney's name was struck off the roll at his own request. He was afterwards called to the Bar in England—see List of Barristers, *suprà*. |
| 12 | 1853—9th May..... | Edward Keate Stace..... | An attorney of the Courts of Queen's Bench, Common Pleas, and Exchequer, in England. |
| 13 | 1854—19th July ..... | George Cooper-Turner..... | An attorney of the Courts of Queen's Bench, Common Pleas, and Exchequer, and a solicitor of the High Court of Chancery in England—see History, *infrà*. |
| 14 | 1855—1st June..... | James Brown ..... | Admitted locally after examination; was an articled clerk to Mr. W. Gaskell. |
| 15 | 1855—4th December.. | Ambrose Parsons ..... | An attorney of the Court of Queen's Bench and a solicitor of the High Court of Chancery in England. |
| 16 | 1858—17th February. | Francis Innes Hazeland ..... | An attorney of the Court of Queen's Bench and a solicitor of the High Court of Chancery in England. Admitted 23rd and 24th November, 1855; was Crown Solicitor in Hongkong—see History, *infrà*. |
| 17 | 1861—23rd December. | Edward Lawrance, junior..... | An attorney of the Court of Queen's Bench and a solicitor of the High Court of Chancery; admitted 19th and 21st November, 1853. |
| 18 | 1862—18th July ..... | Edward Davey Johnson..... | A solicitor of the High Court of Chancery and attorney of the Courts of Queen's Bench, Exchequer, Common Pleas, and Bankruptcy. Admitted in England 28th and 29th January, 1848. |
| 19 | 1863—23rd June ..... | Edmund Sharp ..... | A solicitor of the High Court of Chancery, and an attorney of the Court of Queen's Bench; admitted Hilary Term, 1862; was Crown Solicitor in Hongkong—see History, *infrà*. |

## APPENDIX IV,—*Continued.*

ROLL OF PROCTORS, ATTORNEYS, AND SOLICITORS ADMITTED TO PRACTISE BEFORE THE SUPREME COURT OF HONGKONG—*Continued.*

| No. | Date of Admission. | Name. | Remarks. |
|---|---|---|---|
| 20 | 1864—20th June ..... | Clement Smale ..... | Solicitor of the High Court of Chancery and an attorney of the Court of Queen's Bench: admitted Hilary Term, 1859; B.A. of London University; afterwards practised in Bombay—see History, *infrà*. |
| 21 | 1865—9th January ... | Roger Carmichael Robert Owen | See List of Barristers, *suprà*,—admitted in conformity with the provisions of Ordinance No. 13 of 1862, and on electing to act as an attorney, solicitor, proctor, and notary public only. |
| 22 | 1865—30th November. | Henry Charles Caldwell ..... | Admitted after examination; was an articled clerk to Messrs. Cooper-Turner and Hazeland, and afterwards was in the office of Mr. R. C. R. Owen. —see History, *infrà*. |
| 23 | 1867—25th April ..... | William Wilkinson Toller ... | A solicitor of the High Court of Chancery and an attorney of the Court of Queen's Bench: admitted 24th and 25th November, 1865. |
| 24 | 1869—22nd January... | John Joseph Francis ..... | Admitted after examination; was an articled clerk to Mr. W. Gaskell. On 29th December 1873, this attorney's name was taken off the roll at his own request—see List of Barristers, *suprà*. |
| 25 | 1870—8th February... | William Henry Brereton ..... | Admitted after examination; was articled to Mr. H. C. Caldwell. On 1st February, 1884, this attorney's name was taken off the roll at his own request—see List of Barristers, *suprà*. |
| 26 | 1871—8th November... | William Wotton..... | A solicitor of the High Court of Chancery and an attorney of the Court of Queen's Bench, admitted 12th May, 1870. |
| 27 | 1871—13th December. | Edward Faithful Thomas..... | An attorney of the Court of Queen's Bench, admitted 24th November, 1860; was first admitted locally for a period of nine months only and on the 22nd August, 1872, having produced the proofs required was admitted without limit of time; afterwards practised in the Straits Settlements, being admitted to the Bar there on the 24th November, 1873. |

ROLL OF PROCTORS, ATTORNEYS, AND SOLICITORS ADMITTED TO PRACTISE BEFORE THE SUPREME COURT OF HONGKONG—*Continued.*

| No. | Date of Admission. | Name. | Remarks. |
|---|---|---|---|
| 28 | 1873—31st January ... | Matthew John Denman Stephens.... | An attorney of the Court of Queen's Bench, and a solicitor of the High Court of Chancery ; admitted 24th and 25th November, 1863. |
| 29 | 1873—4th July..... | Alfred Bulmer Johnson ..... | An attorney of the Court of Queen's Bench, and a solicitor of the High Court of Chancery ; admitted 30th and 31st January, 1867, was Crown Solicitor in Hongkong—see History, *infrà*. |
| 30 | 1873—21st July ..... | Louis Jervis Cialardi Amos... | An attorney of the Court of Queen's Bench. |
| 31 | 1874—5th January ... | William Mossop ..... | An attorney of the Court of Queen's Bench and solicitor of the High Court of Chancery in Ireland ; admitted Hilary Term, 1872. |
| 32 | 1874—9th January ... | Henry Lardner Dennys..... | Admitted after examination ; was articled clerk to Mr. J. J. Francis ; previously clerk to the Chief Justice ; now Crown Solicitor—see History, *infrà*. |
| 33 | 1874—9th January ... | Henry James Holmes ..... | Admitted after examination ; was Judge's Clerk. |
| 34 | 1880—13th March .... | Alfred Parker Stokes ..... | A solicitor of the Supreme Court of Judicature in England ; admitted 5th September, 1879. |
| 35 | 1880—12th July ..... | Victor Hobart Deacon ..... | An attorney of the Court of Queen's Bench and solicitor of the High Court of Chancery ; admitted 7th and 8th May, 1874. |
| 36 | 1882—18th April ..... | Creasy Ewens ..... | A solicitor of the Supreme Court of Judicature in England ; admitted 3rd April, 1876 ; was previously Clerk to the Chief Justice. |
| 37 | 1882—27th June ..... | Francis Harry Owen Wilson | A solicitor of the Supreme Court of Judicature in England ; admitted 5th April, 1882 ; was for some time in the firm of Messrs. Wotton and Deacon ; afterwards became Law Adviser to His Highness the Sultan of Zanzibar ; in 1897 granted Her Majesty's Royal licence to accept and wear the order of Hamondieh of the 3rd class conferred upon him by the Sultan in recognition of services rendered by him. |

## APPENDIX IV,—*Continued.*

ROLL OF PROCTORS, ATTORNEYS, AND SOLICITORS ADMITTED TO PRACTISE BEFORE THE SUPREME COURT OF HONGKONG—*Continued.*

| No. | Date of Admission. | Name. | Remarks. |
|---|---|---|---|
| 38 | 1883—4th June..... | Herbert Thomas Arkcoll..... | A solicitor of the Supreme Court of Judicature in England ; admitted 17th November, 1882. |
| 39 | 1883—20th November. | Charles Ernest Bowles..... | A solicitor of the Supreme Court of Judicature in England ; admitted 3rd August, 1883. |
| 40 | 1883—30th November. | Daniel Edmund Caldwell..... | Admitted after examination ; was articled to Mr. H. C. Caldwell—see History, *infrà*. |
| 41 | 1884—15th April ..... | Godfrey Cornewall Chester Master. | A solicitor of the Supreme Court of Judicature in England ; admitted 12th December, 1882. |
| 42 | 1884—22nd August ... | Ernest Richard Wood ..... | A solicitor of the Supreme Court of Judicature in England ; admitted 30th March, 1882. |
| 43 | 1885—30th December. | John Francis Webber ..... | A solicitor of the Supreme Court of Judicature in England ; admitted 7th April, 1883. |
| 44 | 1886—28th September | Charles David Wilkinson..... | A solicitor of the Supreme Court of Judicature in England ; admitted 6th December, 1882. |
| 45 | 1886—10th November | John Hastings ..... | A solicitor of the Supreme Court of Judicature in England ; admitted 22nd May, 1885. |
| 46 | 1887—23rd August ... | Ho Wyson..... | A solicitor of the Supreme Court of Judicature in England ; admitted 8th July, 1887. |
| 47 | 1888—3rd May..... | Joseph Frederick Reece ..... | A solicitor of the Supreme Court of Judicature in England ; admitted 16th September, 1880. |
| 48 | 1888—11th December. | Arthur Bernard Rodyk..... | A solicitor of the Supreme Court of Judicature in England ; admitted 3rd November, 1880. |

ROLL OF PROCTORS, ATTORNEYS, AND SOLICITORS ADMITTED TO PRACTISE BEFORE THE SUPREME COURT OF HONGKONG—*Continued.*

| No. | Date of Admission. | Name. | Remarks. |
|---|---|---|---|
| 50 | 1890—8th February ... | Herbert Johnson Gedge ..... | A solicitor of the Supreme Court of Judicature in England; admitted 13th July, 1888. |
| 51 | 1890—13th November. | Edgar Maber Tozer..... | A solicitor of the Supreme Court of Judicature in England; admitted 2nd April, 1890. |
| 52 | 1891—17th March ... | Harry Rutterford Parkes..... | A solicitor of the Supreme Court of Judicature in England; admitted 11th December, 1888. |
| 53 | 1891—19th May ..... | Evelyn Campbell Ellis..... | A solicitor of the Supreme Court of Judicature in England; admitted 26th March, 1891. |
| 54 | 1891—24th November. | Edward James Grist..... | A solicitor of the Supreme Court of Judicature in England; admitted 8th March, 1889. |
| 55 | 1892—18th January... | John George Wright ..... | A solicitor of the Supreme Court of Judicature in England; admitted 28th May, 1891. |
| 56 | 1892—27th December. | Winfrid Alured Comyn Platt* | A solicitor of the Supreme Court of Judicature in England; admitted 10th August, 1892. |
| 57 | 1893—1st March ..... | Francis Bulmer Lyon Bowley | A solicitor of the Supreme Court of Judicature in England; admitted 4th November, 1890. |
| 58 | 1893—11th April ..... | Kenneth William Mounsey ... | A solicitor of the Supreme Court of Judicature in England; admitted 8th December, 1892. |
| 59 | 1895—31st December.. | Herbert William Looker ..... | A solicitor of the Supreme Court of Judicature in England; admitted 16th March, 1894. |
| 60 | 1896—9th March ..... | Robert Edward McBirney†... | A solicitor of the Supreme Court of Judicature in Ireland; admitted 14th June, 1892. |

* Had previously been called to the Bar in England on the 29th April, 1885, and was disbarred in May, 1890, at his own request, to follow the profession of a solicitor.
† This solicitor's name was, on his own motion, ordered to be removed from the rolls on the 10th August, 1896—*see* History, *infrà*, Vol. II., Ch. LXXXVIII. § II., p. 477.

## APPENDIX IV,—*Continued.*

ROLL OF PROCTORS, ATTORNEYS, AND SOLICITORS ADMITTED TO PRACTISE BEFORE THE SUPREME COURT OF HONGKONG—*Continued.*

| No. | Date of Admission. | Name. | Remarks. |
|---|---|---|---|
| 61 | 1897—5th April ..... | Oswald Dykes Thomson ..... | A solicitor of the Supreme Court of Judicature in England; admitted 9th July, 1892. |
| 62 | 1897—3rd July..... | Seen Wan Tso ..... | A solicitor of the Supreme Court of Judicature in England; admitted 1st October, 1896. |
| 63 | 1897—26th July ..... | Wah On Wei..... | A solicitor of the Supreme Court of Judicature in England; admitted 12th January, 1897. |
| 64 | 1897—24th August ... | Francisco Xavier d'Almada e Castro ..... | Admitted after examination ; was articled clerk to Mr. D. E. Caldwell and to Mr. C. D. Wilkinson. |
| 65 | 1897—29th September | George Kingston Hall Brutton | A solicitor of the Supreme Court of Judicature in England; admitted 14th August, 1891. |
| 66 | 1897—12th October ... | Henry Hursthouse..... | A solicitor of the Supreme Court of Judicature in England; admitted 2nd April, 1897. |
| 67 | 1898—14th May ..... | Frank Barrington Deacon..... | Admitted after examination ; was articled clerk to Messrs. Deacon and Hastings. |

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T. C. Anstey—Attorney-General.

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J. Day—acting Attorney-General.

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F. W. Green—acting Attorney-General.

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# THE HISTORY

OF

# THE LAWS AND COURTS

OF

# HONGKONG.

## INTRODUCTION.

Origin of British authority in China.—British Court of Justice appointed in Canton.—Cession of Hongkong.—Capt. Charles Elliot, R.N., Chief Superintendent of Trade and Plenipotentiary in China.—Chinese Inhabitants of Hongkong, subjects of the Queen of England.—Capt. Wm. Caine, Chief Magistrate.—How guided.—Land.—Chinese traders invited to Hongkong.—Pirates.—Commodore Sir J. J. G. Bremer, Joint Plenipotentiary.—A. R. Johnston, Deputy Superintendent.—Lieut. Pedder, R.N., Marine Magistrate.—Sir H. Poftinger, Chief Superintendent of Trade.—Departure of Capt. Elliot.—Arrival of Sir H. Pottinger.—Chinese Interpretation.—Progress of Hongkong after occupation.—Hongkong declared a free port.—Superintendency of Trade removed from Macao to Hongkong.—Further progress of Hongkong.—Judicial Establishment.—Magisterial powers and authority.—Land.—Administration of Intestates' Estates.—Counterfeit Coins.—Colonial Service Rules.—Secret Societies.—Treaty of Peace and Friendship with China.—Hongkong ceded in perpetuity.—Home rejoicings.—Local opinion.—Edward Farncomb Coroner.—Crime in Hongkong. Piracy.—End of 1842.—Sir Henry Pottinger, K.C.B.—Queen's Order in Council removing from Canton to Hongkong the Criminal and Admiralty Courts.—Alexander Scott, Recording Officer.—Agitation for reforms in the administration of justice.—The Charter of Hongkong.—Sir Henry Pottinger, Governor.—"The Colony of Hongkong." "The City of Victoria."—English Law.—Appointments consequent upon grant of Charter.—Justices of the Peace.—Lieut. Thomas Wade, Chinese Interpreter.—Revocation of Commissions of the Peace.—Land.—Act 6 and 7 Vict., Cap. 80.—Death of Mr. J. R. Morrison.—Crime in 1843.—Curious sentences.—Early history of the Gaol.—Arrival of Major-General D'Aguilar, C.B.—Conclusion.

**Origin of British authority in China.**

HONGKONG was the first British Settlement formed in the Chinese dominions. By an Act passed in the 4th year of the reign of King William the Fourth [3 & 4 Wm. IV. c. 93—28th August, 1833]—"An Act to regulate the Trade to China and India"—it was enacted *inter alia* that, for purposes of trade and amicable intercourse with the dominions of the Emperor of China,

provision should be made for the establishment of a British authority in the said dominions, and that for the purpose of protecting and promoting such trade, three officials, styled "Superintendents of the China Trade" should be appointed, one of whom was to be styled "Chief Superintendent" [sec. 5]. The Act further provided for a Court of Justice with Criminal and Admiralty Jurisdiction for the trial of offences committed by British subjects within the said dominions, and the ports and havens thereof, and on the high seas within one hundred miles of the coast of China, one of the superintendents above-named being the officer to hold such Court [sec. 6].

**British Court of Justice appointed in Canton.**

Under the provisions of the foregoing Act, an Order by the King in Council, dated the 9th December, 1833, was accordingly passed appointing a Court of Justice in Canton, for the trial of offences committed by British subjects in China. The following was the Order above alluded to:—

At the Court of Brighton, the 9th day of December, 1833.—Present, The King's Most Excellent Majesty in Council.

Whereas by a certain Act of Parliament made and passed in the third and fourth year of His Majesty's reign, intituled "An Act to regulate the Trade to China and India," it is amongst other things enacted that it shall and may be lawful for His Majesty, by any such Order or Orders as to His Majesty in Council shall appear expedient and salutary, to create a Court of Justice, with Criminal and Admiralty Jurisdiction, for the trial of offences committed by His Majesty's subjects within the dominions of the Emperor of China, and the ports and havens thereof, and on the high seas within one hundred miles of the coast of China, and to appoint one of the superintendents in the said Act mentioned to be the officer to hold such Court and other officers for executing the process thereof: Now, therefore, in pursuance of the said Act, and in execution of the powers thereby in His Majesty in Council in that behalf vested, it is hereby ordered by His Majesty, by and with the advice of His Privy Council, that there shall be a Court of Justice, with Criminal and Admiralty Jurisdiction, for the purposes aforesaid, which Court shall be holden at Canton in the said dominions, or on board any British ship or vessel in the port or harbour of Canton, and that the said Court shall be holden by the Chief Superintendent for the time being, appointed or to be appointed by His Majesty under and in pursuance of the said Act of Parliament.

And it is further ordered, that the practice and proceedings of the said Court upon the trial of all issues of fact or law, to be joined upon any indictments or informations to be therein brought or prosecuted, shall be conformable to, and correspond with, the practice and proceedings of the Courts of Oyer and Terminer and Gaol Delivery in England, upon the trial of such issues in such Courts, so far as it may be practicable to maintain such conformity and correspondence, regard being had to the difference of local circumstances: and especially it is hereby ordered, that every such issue of fact, or of mixed fact and law, shall be, by the said Chief Superintendent for the time being, and a jury of twelve men; and that upon every such trial the examination of witnesses for and against the party or parties charged, shall take place *virâ voce* in open Court: and that the sentence or judgment of the said Court upon every such trial, founded upon the verdict of such jury, shall

be pronounced in open Court, by such Chief Superintendent as the presiding Judge thereof.

And whereas it will be necessary to frame and prescribe rules of practice and proceeding to be observed upon all such prosecutions, in order to ascertain how far the same can be brought into conformity with the practice and proceeding of His Majesty's Courts of Oyer and Terminer and Gaol Delivery in England, and how far it may be necessary to deviate from such practice and proceeding by reason of the differences of local circumstances—it is therefore further ordered, that such Chief Superintendent for the time being shall be, and he is hereby authorized, from time to time, but subject to the provisions aforesaid, to promulgate all such rules and practice and proceeding as it may be necessary to adopt and follow, upon, or previously to, the commitment of any person to take his trial in the same Court—and respecting taking of bail for the appearance of such person at such trial—and respecting the form and manner of preferring and finding indictments, and of exhibiting criminal informations against any persons charged with any crimes or offences before the said Court—and respecting the manner of summoning and convening jurors for the trial of such indictments or informations—and respecting qualifications of such Jurors, and the mode of summoning and compelling the attendance of witnesses—and respecting the process of the said Court, and the mode of carrying the same into execution—and respecting the times and places of holding such Courts, and the duties of the respective Ministerial Officers attending the same, whom he is hereby authorized to appoint provisionally, subject to His Majesty's approbation—and also respecting every other matter and thing connected with the administration of justice therein which it may be found necessary to regulate.

And it is further ordered, that all rules so to be promulgated as aforesaid shall be binding and take effect from the respective days of the dates thereof, but that the same shall, by such Chief Superintendent, be transmitted to one of His Majesty's Principal Secretaries of State for His Majesty's approbation or disallowance; and that any such rule shall cease to be binding, or to have any force or effect, from and after the time of which His Majesty's disallowance thereof shall be made known to the Chief Superintendent for the time being.

And it is further ordered, that a record shall be duly made and preserved of all the proceedings, judgments, and sentences of the said Court, which record shall be retained in the custody of an officer of the said Court, to be by the Chief Superintendent specially charged with the performance of that duty.

And the Right Honourable Viscount Palmerston, one of His Majesty's Principal Secretaries of State, is to give the necessary directions herein accordingly.

C. C. GREVILLE.

Cession of Hongkong.

Capt. Charles Elliot, R.N., Chief Superintendent of Trade and Plenipotentiary in China.

As will be seen, the jurisdiction of the Court thus created was extended to Hongkong at its cession. After the cessation of hostilities with China, by Circular dated 20th January, 1841, written from Macao, which had become the chief seat of the British during the war, and addressed to British subjects, Captain Charles Elliot, of the Royal Navy, the Chief Superintendent of Trade and Her Majesty's Plenipotentiary in China, announced the cession of the island and harbour of Hongkong to the British Crown, formal possession of the same being afterwards taken

on the 26th of the same month in the name of Her Most Gracious Majesty, Queen Victoria, after the usual formalities had been gone through,* and on the 2nd February, 1841, when on board Her Majesty's ship *Wellesley* at anchor in Hongkong Bay, issued the following proclamation whereby the government of Hongkong devolved upon the Chief Superintendent of the Trade in China, and provision was made for the government of the natives *according to the laws and customs of China*, and of British subjects *under the Criminal and Admiralty Jurisdiction, presently existing in China*, that is to say, under the statute before quoted :—

PROCLAMATION.

By Charles Elliot, Esquire, a captain in the Royal Navy, Chief Superintendent of the Trade of British subjects in China, and holding full powers, under the Great Seal of the United Kingdom of Great Britain and Ireland, to execute the office of Her Majesty's Commissioner, Procurator, and Plenipotentiary in China.

The island of Hongkong having been ceded to the British Crown under the seal of the Imperial Minister and High Commissioner Keshen, it has become necessary to provide for the Government thereof, pending Her Majesty's further pleasure.

By virtue of the authority, therefore, in me vested, all Her Majesty's rights, royalties, and privileges of all kinds whatever, in and over the said island of Hongkong whether to or over lands, harbours, property, or personal service, are hereby declared proclaimed, and to Her Majesty fully reserved.

And I do hereby declare and proclaim, that, pending Her Majesty's further pleasure, the government of the said island shall devolve upon, and be exercised by, the person filling the office of Chief Superintendent of the Trade of British subjects in China for the time being.

And I do hereby declare and proclaim, that, pending Her Majesty's

---

* The following is an account of the taking possession of the island of Hongkong on the 25th of January, 1841, by Captain Sir Edward Belcher, R N. :—

"The only important point to which we became officially parties, was the cession of Hongkong, situated off the peninsula of Kaulung, within the island of Lama, and on the northern side of the entrance through the Lemma channel. Captain Scott, of the *Samarang*, having been left behind to give up the demolished forts of Chuenpe and Tycocktow to the Chinese authorities, the squadron withdrew from the river, and moved down to the SW. bay of Lantao, the Commodore, shifting his broad pendant to the *Calliope*, moved on to Macao, accompanied by the *Larne*, *Hyacinth*, and *Modeste*. The *Columbine* was despatched to Chusan, to recall the force stationed there, and further to direct its evacuation on the release of Captain Anstruther, Mrs. Noble, etc.

On the return of the Commodore on the 24th, we were directed to proceed to Hongkong, and commence its survey. We landed on Monday, the 25th, 1841, at fifteen minutes past eight a.m., and being the bonâ fide first possessors, Her Majesty's health was drank with three cheers on Possession Mount. On the 26th, the squadron arrived; the marines were landed, the union hoisted on our post, and formal possession taken of the island, by Commodore Sir J. J. G. Bremer, accompanied by the other officers of the squadron, under a *feu-de-joie* from the other marines, and a royal salute from the ships of war.

On the Kaulung peninsula were situated two batteries which might have commanded the anchorage, but which appeared at present to be but thinly manned; these received due notice to withdraw their men and guns, as part of the late treaty."†

† "Narrative of a voyage round the world, performed in H. M. 's ship *Sulphur*, during the years 1836-1842, including details of the naval operations in China, from December, 1840, to November, 1842—Published under the authority of the Lords Commissioners of the Admiralty by Captain Sir Edward Belcher, R.N., K.C.B., etc., Commander of the Expedition."—Vol. II., pp. 147-148. *Nota.*—An impression had long prevailed that, when possession was taken of the island, midshipman Dowell (afterwards Admiral Sir Wm. Dowell, K.C.B., in command of the China squadron, 1884-1885) had hoisted the British flag on Possession Mount, but the gallant admiral himself afterwards corrected the misapprehension. He was, it appears, with the boat's crew that

further pleasure, the natives of the island of Hongkong, and all natives of China thereto resorting, shall be governed according to the laws and customs of China, every description of torture excepted.

And I do further declare and proclaim, that, pending Her Majesty's further pleasure, all offences committed in Hongkong by Her Majesty's subjects, or other persons than natives of the island or of China thereto resorting, shall fall under the cognizance of the Criminal and Admiralty Jurisdiction presently existing in China.

And I do further declare and proclaim, that, pending Her Majesty's further pleasure, such rules and regulations as may be necessary from time to time for the government of Hongkong shall be issued under the hand and seal of the person filling the office of Chief Superintendent of the Trade of British subjects in China for the time being.

And I do further declare and proclaim, that, pending Her Majesty's further pleasure, all British subjects and foreigners residing in, or resorting to, the island of Hongkong, shall enjoy full security and protection, according to the principles and practice of British law, so long as they shall continue to conform to the authority of Her Majesty's government in and over the island of Hongkong, hereby duly constituted and proclaimed.

Given under my hand and seal of office, on board of Her Majesty's ship *Wellesley*, at anchor in Hongkong Bay, this second day of February, in the year of Our Lord one thousand eight hundred and forty-one.

God save the Queen.

(Signed) CHARLES ELLIOT.

Chinese inhabitants of Hongkong, subjects of the Queen of England.

The Chinese inhabitants of Hongkong were warned also by proclamation of the cession of the island; *that they were now subjects of the Queen of England*, and that, pending Her Majesty's pleasure, they would, subject to the control of a British Magistrate, be governed *according to the laws, customs, and usages of the Chinese.*

The population then numbered about 5,000.

The following is a copy of the proclamation in question:

TO THE CHINESE INHABITANTS OF HONGKONG.

---

PROCLAMATION.

Bremer, Commander-in-Chief, and Elliot, Plenipotentiary, etc., etc., by this proclamation make known to the inhabitants of the island of Hongkong, that that island has now become part of the dominions of the Queen of England by clear public agreement between the High Officers of the Celestial and British Courts: and all native persons residing therein must understand that they are now subjects of the Queen of England, and to whom and to whose officers they must pay duty and obedience.

The inhabitants are hereby promised protection, in Her Majesty's gracious name, against all enemies whatever; and they are further secured in the free exercise of their religious rites, ceremonies, and social customs, and in the enjoyment of their lawful private property and interests. They will be governed, pending Her Majesty's further pleasure, according to the laws, customs, and usages of the Chinese (every description of torture excepted)

by the elders of villages, subject to the control of a British magistrate; and any person, having complaint to prefer of ill-usage or injustice against any Englishman or foreigner, will quietly make report to the nearest officer, to the end that full justice may be done. Chinese ships and merchants, resorting to the port of Hongkong for purposes of trade, are hereby exempted, in the name of the Queen of England, from charge or duty of any kind to the British government. The pleasure of the government will be declared from time to time by further proclamation: and all heads of villages are held responsible that the commands are duly respected and observed.

Given under seal of office, this 1st day of February, 1841.

Capt. Wm. Caine, Chief Magistrate.

On the 30th of April, 1841, Captain Elliot, by warrant under his hand and seal of office, at Macao, appointed Captain William Caine of the 26th (or Cameronian) Regiment of Infantry to be Chief Magistrate of Hongkong, requiring him in the case of natives to exercise authority "according to the laws, customs, and usages of China," and in the case of all others "according to the customs and usages of British Police Law," providing at the same time a scale of punishment for offences. By the terms of the warrant, Captain Caine, was further practically constituted Chief of the Police and of the Gaol. As the warrant of appointment is important as reciting certain provisions showing

How guided.

by what law, forms, and procedure he was guided, it is here reproduced:—

## WARRANT.

By Charles Elliot, Esquire, Her Majesty's Plenipotentiary, etc., etc., charged with the government of the island of Hongkong: Pending Her Majesty's further pleasure, I do hereby constitute you, William Caine, Esquire, Captain in Her Majesty's 26th (or Cameronian) Regiment of Infantry, to be Chief Magistrate of the island of Hongkong; and I do further authorize and require you to exercise authority, according to the laws, customs, and usages of China, as nearly as may be (every description of torture excepted), for the preservation of the peace, and the protection of life and property, over all the native inhabitants in the said island and the harbours thereof.

And I do further authorize and require you, in any cases where the crime, according to Chinese law, shall involve punishments and penalties exceeding the following scale in severity, to remit the case for the judgment of the head of the government for the time being.

Scale:—Imprisonment, with or without hard labour, for more than three months; or penalties exceeding $400.
Corporal punishment exceeding 100 lashes.
Capital punishment.

And I do further require you, in all cases followed by sentence or infliction of punishment, to keep a record, containing a brief statement of the case, and copy of the sentence.

And I further authorize and require you, to exercise magisterial and police authority over all persons whatever (other than natives of the island, or persons subject to the Mutiny Act, or to the general law for the government of the fleet), who shall be found committing breaches of the peace, on shore or in the harbours of this island, or breaches of any regulation to be issued from time to time by this government, according to the customs and usages of British Police Law.

And I do hereby authorize you, for the police purposes hereinbefore specified, to arrest, detain, discharge, and punish such offenders, according to the principles and practice of general British Police Law.

And all persons, subject to the Mutiny Act, or the general law for the government of the fleet, found committing police or other offences, shall be handed over to their proper military superiors for punishment.

And I do further authorize and require you, to detain in safe custody any person whatever, found committing crimes and offences within the government of Hongkong, amounting to felony according to the law of England; forthwith reporting your proceedings herein, and the grounds thereof, to the head of the government for the time being. And for all your lawful proceedings in the premises, this Warrant shall be your sufficient protection and authority.

Given under my hand and seal of office at Macao, this thirtieth day of April, in the year 1841.

CHARLES ELLIOT.

On the same date "Rules and Regulations for the British Merchant Shipping and for the Marine Magistrate" were duly published. The first public notice relating to the sale of land in the colony, and declaring the conditions upon which allotments of land would be made, was published on the 1st May, 1841, by Captain Elliot. By this notice it was declared that the number of allotments to be disposed of from time to time would be regulated with due regard to the actual public wants; that it would be a condition of each title that a building of a certain value must be erected within a reasonable period of time on the allotments; that there would be a general reservation of all Her Majesty's rights; and that, pending Her Majesty's further pleasure, the lands would be allotted according to the principles and practice of British laws upon the tenure of quit-rent to the Crown. Each allotment was to be put up at public auction at a certain upset rate of quit-rent and to be disposed of to the highest bidder; but it was engaged, upon the part of Her Majesty's Government, that persons taking land upon these terms should have the privilege of purchasing in freehold (if that tenure should thereafter be offered by Her Majesty's Government), or of continuing to hold upon the original quit-rent. Land

This notice further declared that all arrangements with natives for the cession of lands, in cultivation, or substantially built upon, were to be made only through an officer deputed by the Government of the island; and that no title would be valid, and no occupancy respected, unless the person claiming should hold under an instrument granted by the government of the island, of which due registry must be made in the Government Office. It was distinctly to be understood that all natives, in the actual occupancy of lands, in cultivation, or substantially built upon, would be constrained to establish their

rights, to the satisfaction of the land officer, and to take out titles, and have the same duly registered. Persons purchasing town lots were to be entitled to purchase suburban or country lots subject to the approval of the Government, but no run of water was to be diverted from its course without permission of the Government. [*Hongkong Gazette*, 1st and 15th May, 1841.]

On the 7th June, 1841, a notice under the hand of Captain Elliot dated from Macao was advertised of the proposed sale of the annual quit-rents of 100 lots of land with water frontage, and of 100 town or suburban lots. The sale was to take place at Hongkong on the 12th of the same month, but was postponed to the 14th when it was found impossible to put up the number of lots (200) as advertised, and only 50 lots having a sea frontage of 100 feet each, or nearly so, were offered for sale. Not only was the frontage of these lots not defined, but the depth from the sea to the road (the present Queen's Road) was stated, in the terms of sale, to vary considerably, and intending purchasers would have the opportunity of observing the extent for themselves.

The terms of sale further stated that the biddings were to be for annual rate of quit-rent, and should be made in pounds sterling, the dollar in all payments to be computed at the rate of 4*s*. 4*d*. The upset price was fixed at £10 for each lot, and the biddings were to advance by 10*s*. Each lot having been knocked down to the highest bidder, he was to receive an acknowledgment that he was the purchaser of the lot; and this acknowledgment was to be exchanged for a more formal title as soon as the precise measurement and registration of the lots should be completed. The purchasers were required to erect upon each lot a building of the appraised value of $1,000, or to incur upon the land an outlay to that amount, within a period of six months from the date of sale, under penalty of forfeiture. The terms of sale were signed by Mr. J. Robert Morrison, Acting Secretary and Treasurer to the Superintendents of Trade.

Three days after the sale, Captain Elliot addressed a letter from Macao to Messrs. Jardine, Matheson, & Co., and Messrs. Dent & Co., respecting the disposition of the Crown lands of Hongkong, pending the pleasure of Her Majesty's Government, as follows:—

Macao, 17th June, 1841.

Gentlemen,

Having had under my consideration the particulars of the first sale of lots in Hongkong on the 14th instant, I am of opinion that I shall be consulting the interests of the establishment in making immediate public declaration of my proposal to move Her Majesty's government either to pass the lands in fee simple for one or two years purchase at the late rates, or to charge them in future with no more than a nominal quit-rent, if that tenure continues to obtain,

My own object respecting the disposal of lands, pending the pleasure of Her Majesty's Government, was to secure to firms, and all other persons, British and Foreigners, having permanent interest in the country, sufficient space for their necessities, at moderate rates, with as little competition as might enable parties to accommodate themselves according to their respective wants.

I feel assured, upon attentive reflection, that steady adherence to this rule will be found most conducive to the well-understood interests of the establishment, and to the fair claims of persons on the spot. Parties falling within the description I have specified, not yet supplied with lots, will soon be in a situation to accommodate themselves.

May I request you, Gentlemen, to circulate this letter.—I have, etc.,

CHARLES ELLIOT.

Messrs. Jardine, Matheson, & Co., and Messrs. Dent & Co."

On the 15th October, 1841, a Government Notification, dated at Hongkong and signed by Mr. A. R. Johnston, Deputy Superintendent charged with the Government of the island of Hongkong, was issued, stating, with reference to the public notice and declaration under date the 1st May, 1841, that it was then (October) found desirable that persons applying for lots of land for the purpose of building upon should be at once accommodated upon terms which would be made known to them by application in person to the Land Officer.

The terms referred to in this notification were payment of Crown rent at the average rate of rental realized at the sale on the 14th June, 1841, and at the rate of £20 per annum per quarter acre for town inland lots and £5 per quarter acre for suburban inland lots.

Chinese traders invited to Hongkong.

On the 7th June, by proclamation under the hand of Captain Elliot, Chinese traders were invited to trade with Hongkong, full protection being promised them, it being stated also that there would not be any charges on imports or exports. Rewards leading to the detection of pirates were also promised, the pirates to be taken and delivered to the Chinese Government for punishment.

Pirates.

Commodore Sir J. J. G. Bremer, Joint Plenipotentiary.

A. R. Johnston, Deputy Superintendent.

Lieut. Pedder, R.N., Marine Magistrate.

By public notification dated the 19th June, 1841, consequent upon the intended departure of Captain Elliot, it was announced that Her Majesty the Queen had been pleased to appoint Commodore Sir James John Gordon Bremer, Knt., C.B., K.C.H., to be Joint Plenipotentiary; on the 22nd June, Alexander Robert Johnston, Esquire, Deputy Superintendent of the Trade of British Subjects in China, assumed charge of the government of the island of Hongkong on behalf of the Chief Superintendent; and on the 31st July, Lieutenant William Pedder, R.N., lately of H. M. S. *Nemesis*, received the appointment of Harbour Master and Marine Magistrate, regulations for the port of Hongkong and for the Marine Magistrate being also published.

**Sir H. Pottinger. Chief Superintendent of Trade.**

**Departure of Capt. Elliot.**

On the 15th May, 1841, Sir Henry Pottinger, Baronet, a Colonel in the service of the East India Company, received the appointment of Her Majesty's Chief Superintendent of Trade in China, in succession to Captain Elliot, who, on being apprised of the same, left for England in the steamer *Atalanta* viâ Bombay, on the 24th August, leaving the Government of Hongkong in charge of Mr Johnston, his deputy. Lord Palmerston also transmitted to Sir Henry Pottinger a full power authorizing and empowering him to negotiate and conclude with China any treaty or agreement for the arrangement of differences subsisting between Great Britain and China. Captain Elliot arrived in England on the 6th November, and not long after was appointed Consul-General at Texas. He left England on the 1st June, 1842, to assume the duties of his new office. Prior to his departure, in the House of Commons on the 31st May, 1842, Sir Robert Peel stated "that, without giving any opinion on the conduct or character of Captain Elliot, during the occupancy of his difficult and embarrassing position at Canton, he nevertheless was disposed, from his intercourse with him since he returned home, to repose the highest confidence in his integrity and ability."

**Arrival of Sir H. Pottinger.**

During the night of Tuesday, the 10th August, 1841, the H. E. I. Co.'s Frigate *Sesostris* arrived at Macao with Sir Henry Pottinger and Admiral Sir Wm. Parker, K.C.B., Commander of the Naval Forces, on board. On taking charge of the offices of Her Majesty's sole Plenipotentiary and Chief Superintendent in China, on the 12th August, 1841, Sir Henry Pottinger duly notified his appointment to the public, at the same time availing himself of the opportunity to announce that "the arrangements which had been made by his predecessor connected with the island of Hongkong, would remain in force until the pleasure of Her Majesty regarding the island and these arrangements shall be received." Mr. Johnston continued in charge of the island as before, under the title of "Deputy Superintendent of British Trade charged with the government of the island of Hongkong."

**Chinese Interpretation.**

In its September number (1841), *Blackwood's Magazine* contained an article upon the subject of Chinese interpreters and their translations. The article is here reproduced as pointing to a matter of public importance up to this date, and which was then rightly termed by the writer one of the "grossest of all abuses." The following was the article in question :—

### CHINESE INTERPRETERS.

"The delusions as to facts are theirs; but we ourselves are exposed to the most serious delusions as to the Chinese meaning, by the mendacious qualities of those translations which we consent to receive from our interpreters. These Interpreters, manifestly British, are more palpably falsifiers from ignorance

than the Turkish from fraud. They know little enough, perhaps, of the oral Chinese; but everybody knows how much more difficult is the written Chinese which it takes a long life to master in any reasonable proportion of characters. At all events, the translations themselves are good evidence that the translators are falsifiers. Even in our own literature, not one translation in thirty from the German, but is disfigured by the vilest ignorance of the German idiom. Under the government of Napoleon, Chenier, who was personally pensioned by the State, and was sometimes employed to translate Spanish despatches, etc., shows by mistranslations the most childish, in his printed specimens from many Spanish poets, that he was a mere incipient student of that language, at a time when he was undertaking the Spanish literature, and when he was confidentially relied on by the French Government. Yet, in such a case, the mischief had limits. Many Spaniards are always to be found in Paris; and too gross an error would at once have awakened suspicion. In China, on the other hand, there is nobody on our part to make a sceptical review of the translations, and sentiments the most impossible to a Chinese mind pervade the whole documents. Thus the Emperor is made to say at one time, that the English must be made prisoners and conducted to Pekin, "there to undergo the last penalties of the law." This phrase is a pure fiction of the translator's; no such idea as that of the law's supremacy, or a prisoner's death being a sacrifice to law and not to the Emperor's wrath, ever entered or could enter an Oriental head--far less a Chinese head. Again, in a more recent State paper, the Emperor is made to say that one of the two nations militant must conquer, and one must die. Here the very insolence of mendacity appears in the translator. What Oriental potentate could by possibility acknowledge a deadly or a doubtful contest? What Chinese Sovereign, nursed in the belief that all Europe is composed of a few petty islands in a dark corner of the world, abandoned by all respectable people, who admits into his maps no important State but Russia, and views himself as a brother of heavenly powers, would ever present to his people even the hypothesis of such a dilemma? The case begins in ignorance, and ends in mendacity. We shall never obtain one glimmer of the Chinese meaning, nor they of ours, if some remedy is not instantly applied to the grossest of all abuses."

With what foresight these remarks were penned, this work throughout will show.

Progress of Hongkong after occupation.

The *Hongkong Gazette*, in its number of the 1st January, 1842, while reviewing the progress of the island from the time it was taken possession of in January of the previous year, mentions that nothing was done for its improvement until May, 1841, when a Chief Magistrate was appointed, and a road commenced; and that from May to August the population increased most rapidly, estimating it, after the first year of occupation, at about 15,000 persons. The population, then, was stated to be hard-working, industrious, and cheerful, the people too much engaged apparently with their own affairs to have time for idleness, crimes having been anything but of frequent occurrence, the magistracy and prison being also mentioned as having been then completed. *

* These were the first two buildings erected in Hongkong. An interesting paper from a Chinese point of view appears in the *Chinese Repository*, 1843. Vol. xii., pp. 362-368, on Hongkong. The extortion practised by the Chinese officials then in Government employ and by the Police at this early period of the Colony, will be found there duly noticed.

Hongkong declared a free port.

Her Majesty's Plenipotentiary, by proclamation of the 16th February, 1842, declared Hongkong a free port, and on the 25th of the same month notified his intention of removing his establishment from Macao to Hongkong, where his presence had become necessary, appointing Mr. John Rickett, Government Agent at the former place. He remained here until the month of June when he rejoined the headquarters of the expedition on its way to Nanking just after the capture of Woosung. During his stay in Hongkong, Sir Henry Pottinger personally superintended the affairs of the Colony. At the end of March, the *Friend of China*, a local paper, while noticing the progress of Hongkong at this early stage, remarked that the annals of colonization did not record a like progress, and qualified the beginning as "miraculous." The population had now increased to at least 20,000, many if not most of them being said to be outcasts from their own country and perhaps liable to punishment for crimes against their own laws, which made it a matter of congratulation that order was so well established, despite frequent piracies and robberies. The Judicial Establishment now consisted of Major Caine as Chief Magistrate; Mr. Samuel Fearon, as Interpreter and Clerk of the Court, Coroner, and Notary Public; and Lieutenant Pedder, R.N., as Marine Magistrate and Harbour Master.

Superintendency of Trade removed from Macao to Hongkong.

Further progress of Hongkong.

Judicial Establishment.

Magisterial powers and authority.

The powers and authority originally granted to the Chief and Marine Magistrates having been increased in some respects, and their warrants of appointment revised and modified, these were now on the 25th April, 1842, duly published. The Chief Magistrate's jurisdiction in civil matters was raised to $250, with power to confine debtors, if necessary, though it was wished more extensive powers had been vested in him in regard to piracy which had become a daily increasing evil. For a robbery committed in June, the records show that the captured prisoner was sentenced by the Chief Magistrate to receive sixty strokes of the bamboo, the mode of inflicting legal punishments among the Chinese and which had been locally adopted.

Land.

Nine months had hardly elapsed since the first land sale of the 14th June, 1841, before alluded to, when difficulties began to arise between the purchasers and the Government owing to the uncertain description of the lots sold, the claims made for allotments of land, the alteration, curtailment, and enlargement of boundaries by the making of new roads, and the uncertain tenure upon which the land was to be held, and on the 22nd March, 1842, Sir Henry Pottinger issued a Government Notification of his intention to appoint a Committee to investigate any claim that might then be pending regarding allotted locations of ground of whatever description, and finally to define and mark off the limits of all locations that had yet been sold

or granted upon any other terms. The Committee were likewise to definitely fix the direction, breadth, etc., of the "Queen's" and all other public roads within the Settlement, and empowered to order the immediate removal of any encroachments that might be found to have been unauthorizedly made upon them, the expense of such removals being charged to the individuals, to whom the locations, in which they might have been made, belonged. This notification added that the Committee would further be instructed to turn its attention to the examination of the best points for laying down new lines of roads, etc., and providing locations to meet the demands that might be expected from the rapidly increasing population of the Colony, both European and native, and that any suggestions that individuals might wish to offer on this part of the Committee's proceedings would receive from it the fullest consideration; but it was at the same time expressly notified that no purchases of ground, by private persons, from natives formerly or then in possession would be recognized or confirmed unless the previous sanction of the constituted authorities should have been obtained, it being the basis of the footing on which the island of Hongkong had been taken possession of and was to be held, pending the Queen's Royal and Gracious Commands, that the proprietary of the soil was vested in and appertained solely to the Crown, and that, on the same principle, the reclaiming of land, beyond high water mark, must be deemed an infringement on the royalties of Her Majesty, and was therefore positively prohibited by any private persons.

The Land Committee was appointed by Sir Henry Pottinger on the 29th March, 1842.

The members of the Committee were—

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|---|---|
| With the sanction of Major-General Burrell, C.B. | Major Malcolm.<br>Captain Meik, H. M.'s 49th Foot.<br>Lieut. Sargent.<br>R. Woosnam. |
| With the sanction of Capt. Sir Thomas Herbert, K.C.B. | Mr. Pasco. |

The Land Officer, Captain Mylius, was to attend the Committee for the purpose of giving effect to its proceedings by laying down the necessary land marks, boundaries, roads, etc. The instructions to the Committee were to report to Government any cases in which they were of opinion that the native Chinese should be remunerated for ground which was in their possession previous to the occupation of the island by Her Majesty's forces and which might have been appropriated, as well as the amount of remuneration; to select the most eligible spots for building landing places; to define the limits of the cantonments, or locations for officers, near the different barracks; to likewise fix

the extent of ground to be preserved for the naval depôt, and for dock yards, including spots for one or more patent slips which, it was understood, were likely to be erected by companies or individuals; and it being the intention of the Government to form a watering place for the shipping, the Committee were to select the most eligible spot with a running stream of good water for the purpose.

This Committee appears to have granted several lots of land, but made no report upon the matters submitted to them. No lease or other deed of grant of the lots had at this time been issued to the purchasers, the "grant" of the lot being simply an entry in a book kept by the Land Officer showing only the name of the purchaser and the side measurements of the lot purchased, and as sales of lots had already begun to take place from one holder to another, difficulties had arisen as to the liabilities of the purchasers to the Crown. As a remedy for these difficulties and to provide for the registration of sales, the following Government Notification of the 2nd May, 1842, signed by the Land Officer, was issued:—

GOVERNMENT NOTIFICATION.

"With a view to the prevention of future misunderstanding and difficulties, His Excellency Sir Henry Pottinger, Bart., is pleased to direct that no sales of land are to be made by the holders of grants to other parties except with the knowledge of the Land Officer, and that any sales that may have been made, or may be made in future, unless registered in the Land Office, shall be held to be invalid.

"Purchasers of grants from the individuals before holding them are to understand distinctly that they will be under the same liabilities to Government as the parties from whom they purchase."

By Order,

(Signed) GEO. F. MYLIUS,
Land Officer.

Land Office, Hongkong, 2nd May, 1842.

Only two weeks after this date the appointment of Land Officer was temporarily abolished, and further grants of land were prohibited.

On the 27th May, 1842, a "Land and Road Inspector" was appointed to do the work of the Land Officer. His instructions with reference to the Crown Lands of the Colony stated that, as the existing prohibition against further grants of land was to continue in full force pending the receipt of commands from Her Majesty's Government, it would not even be necessary for him to bring any applications on that subject to the notice of the Deputy Superintendent who would be charged with the Civil Government of the island during the absence of Sir Henry Pottinger. The duties of the new Land and Road Inspector were to prevent encroachments on the unappropriated lands or on the roads, and he was to register in his Office all sales and

transfers of land in conformity with the notification issued by the Land Officer on the 2nd of the same month. This notification was signed by Mr. J. R. Morrison, Acting Secretary and Treasurer.

Administration of Intestates' Estates.

The administration of the estates of intestates who had died in the Colony now began to engage the attention of the authorities, Her Majesty's Superintendent of Trade appointing alternately an official to act "on their behalf" in such matters. The first instance of the kind dates from the 9th May, 1842, when it was notified that Mr. Robert Edwards would administer to the estate of one Alfred Rivers Labtat on behalf of the "Superintendent." The formula necessary for administering to estates of deceased persons does not appear to have been adopted at this early period of the colony.

Counterfeit Coins.

Counterfeit coins in circulation had become so plentiful that, in July, 1842, the Chief Magistrate issued a proclamation giving warning of the consequences entailed in being found in possession of these.

Colonial Service Rules.

A new edition of the rules and regulations for the Colonial Service was received at this time by the Government. Several were of judicial interest, but were not applicable to Hongkong, which, as yet, possessed no legislature of its own.

Secret Societies.

Secret societies, numerously supported, were reported as established in Hongkong and possessing much influence.

Treaty of Peace and Friendship with China.

Hongkong ceded in perpetuity.

A treaty of peace and friendship with China having been concluded and signed on the 26th August, 1841, Her Majesty's Plenipotentiary, Sir Henry Pottinger, while on board the steam frigate *Queen* in the Yangtze Kiang River, off Nanking, on the same date, issued a circular to British subjects in China, which recited the most important provisions of the treaty, the fourth paragraph of which declared "the island of Hongkong ceded in perpetuity to Her Britannic Majesty, her heirs and successors."

By a subsequent treaty, known as the Treaty of Nanking, dated August 29, 1842, section III., after repeating the cession clause before quoted, laid down that Hongkong was "*to be governed by such laws and regulations as Her Majesty the Queen of Great Britain, etc., shall see fit to direct.*"

Home rejoicings.

The news conveying the conclusion of peace reached London on the 22nd November, 1842, and diffused great joy, Lord Stanley writing to the Lord Mayor "that it had pleased Almighty God to crown Her Majesty's arms with complete success; and that the Emperor of China had been compelled to recognize the claims of Great Britain,"—a paper remarking that "in the metropolis the church bells rang, the Park and Tower guns roared in honour of the occasion. A salute from the Castle and the chimes of the city bells gladdened the citizens of *Auld Reekie*. In Dublin, more gay and joyous still, the whole

garrison assembled in Phœnix Park and hailed the welcome news by firing a *feu-de-joie*. At Liverpool the intelligence was greeted with firing of guns and ringing of bells. In the provinces the demonstrations of popular satisfaction were universal." By notification in the *Gazette* of the 2nd December, 1842, it was announced that to mark her appreciation of the services of the distinguished commanding officers, Her Majesty had been pleased to confer upon Vice-Admiral Sir Wm. Parker, K.C.B., Commander of Her Majesty's Naval Forces in India and China, and Major-General Sir Henry Pottinger, Bart., K.C.B., Her Majesty's Plenipotentiary in China, the insignia of Knight Grand Cross of the Most Honourable Order of the Bath, the thanks of both Houses of Parliament being awarded to the Commanders of the army and navy.

**Local opinion.**

Commenting upon the treaty, the local paper *The Friend of China and Hongkong Gazette* of the 10th September, 1842, remarked that the stipulations were such, that whilst they were not unbefitting the dignity of Great Britain, they were yet so moderate in their scope and tenour, as to compel the admiration of the civilized world. The importance of the stipulation of the cession of Hongkong in perpetuity to Great Britain was hardly recognizable, except *that it relieved the subjects of the Emperor from any pains and penalties to which otherwise they would be exposed, by resorting hither.*

**Edward Farncomb, Coroner.**

On the 3rd September, 1842, Mr. Edward Farncomb received the appointment of Coroner for Hongkong in succession to Mr. S. Fearon, and was duly sworn in. This gentleman had previously advertized his qualifications to the public in the following manner which will bear reproduction :—

CIRCULAR.

Mr. Edward Farncomb,
*Of London*,

begs most respectfully to announce to his friends, and the public in general, that he has opened

An Office in Hongkong
as
An Attorney at Law and Conveyancer,

and he begs to solicit their patronage. In addition, he takes the opportunity to assure them that any matters which may be entrusted to him will meet with the best attention, care and secrecy.

No. 1, Magistracy Street.

The first Coroner's inquest recorded was held on the 1st October, 1842, when Mr. Farncomb held an inquest into the cause of death of a Chinaman whose body had been found floating close to the pier on the morning of the same date bearing a gun-shot wound, and who was said to have been one of a gang of thieves who, on the previous evening, had broken into the premises of a local merchant named J. F. Hight, and at whom the latter had fired a random shot. The jury returned a verdict that "the

Chinaman was shot by the pistol" and there the matter seemed to have ended.

Crime in Hongkong.

Daring gang robberies were frequent at this period and complaints were rife as to the inability of the authorities to cope with them, in consequence of which the Chief Magistrate issued a proclamation in Chinese which was posted on the walls about the town, and which excited considerable interest among the native population. The following is a translation of the proclamation :—

"Caine, Chief Magistrate of the Great English nation's territory of Hongkong, issues his proclamation. It appears that recently a great many night robberies have been committed, and this proclamation is now issued for the full information of all the people. Hereafter all Chinese, besides the usual watchmen, are forbidden to walk the streets after eleven o'clock at night, and whosoever shall violate this prohibition shall be arrested by the Police and brought before the Chief Magistrate for thorough examination and judgment.

Let each tremblingly obey. A special proclamation.

Taou-Kwang, 22nd year, 9th moon, 1st day, 4th October, 1842."

Piracy.

Accounts of piracies also continued to attract public attention, H. M.'s Plenipotentiary undertaking to take measures in conjunction with the Chinese authorities to put down the pirates. Sir Henry Pottinger, however, was not long before he discovered how futile would be any attempt on his part to induce the Chinese authorities to co-operate with him in his endeavour to put down piracy, for, writing from Government House, on the 8th March, 1843, he informs Admiral Sir William Parker that the Chinese had "civilly declined" any co-operation with him, and that he (Sir Henry Pottinger) had been for some days in communication with the principal mandarin entrusted with the general superintendence of this service, at the same time detailing the Chinese plans. But the public did not rest satisfied and were greatly incensed at the course pursued, complaining, naturally enough, from their knowledge of the Chinese, that the arrangement was one that would never answer and ought, under no circumstances, to be countenanced, no one having any confidence in the integrity of Chinese officers. Piracy from the frequency of its occurrence had been forced upon public attention more than ever since January, 1843, when the pirates had had the audacity to capture a Chinese vessel while under convoy of one of Her Majesty's sloops of war.

End of 1842.

The reports from the Chief Magistrate's Court to the end of 1842 contain nothing of interest outside the usual punishments inflicted for serious offences, mostly robberies, which consisted in some cases of 60 to 100 strokes of the bamboo, besides several months' imprisonment. The administration of justice with

regard to the inadequate punishment meted out for serious crimes also called for reform, power being asked, without an expensive judicatory, to meet the then existing exigencies of society. The want, moreover, of a properly constituted Court of civil jurisdiction being also felt as well.

**Sir Henry Pottinger, K.C.B.**

The forms and ceremonies, attendant upon the investiture of Sir Henry Pottinger with the insignia of a Knight Grand Cross of the Most Honourable Order of the Bath were observed at Government House on the 20th May, 1843, Vice-Admiral Sir William Parker, at the express command of the Home Government, investing him with the Order, the Admiral himself having been invested with the insignia on board H. M. S. *Cornwallis*, on the 18th of the same month.

**Queen's Order in Council removing from Canton to Hongkong, the Criminal and Admiralty Courts.**

By proclamation of the 1st June, 1843, an Order passed at a Privy Council held at Windsor on the 4th January, 1843, directing the removal to Hongkong of the Criminal and Admiralty Courts heretofore held at Canton under Order in Council of the 9th December, 1833, was ordered to be published. Whether this removal was meant as a measure of convenience to the Chief Superintendent of Trade, whose time was now almost entirely taken up with Hongkong affairs or as a temporary relief to the community of Hongkong, is not quite apparent, although, from the previously unsatisfactory state of affairs, this would seem to have been the object aimed at. But suffice it to say that though the removal of the Court from Canton to Hongkong and the establishment of suitable rules of practice and procedure were in themselves to be considered in the light of an improvement, nevertheless the fact remained that both the machinery and powers were yet still wanting and were totally insufficient to meet the altered state of things. The following is the Order above alluded to :—

At the Court at Windsor, the 4th day of January, 1843—Present, The Queen's most Excellent Majesty in Council. Whereas by an Act of Parliament made and passed in the Session of Parliament holden in the third and fourth years of the reign of His late Majesty King William the Fourth, intituled "An Act to regulate the Trade to China and India," it was, amongst other things, enacted, that it should and might be lawful for His said Majesty, by any such Order or Orders as to His said Majesty in Council should appear expedient and salutary, to create a Court of Justice, with Criminal and Admiralty Jurisdiction, for the trial of offences committed by His said Majesty's subjects within the Dominions of the Emperor of China and the ports and havens thereof, and on the high seas within one hundred miles of the coast of China ; and to appoint one of the Superintendents, in the said Act mentioned, to be the Officer to hold such Court, and other Officers for executing the process thereof :

And whereas, in pursuance of the said Act, and in execution of the powers thereby in His said late Majesty in Council in that behalf vested, it was, by an Order dated the 9th day of December, one thousand eight hundred and thirty-three, ordered by His said late Majesty, by and with the

advice of His Privy Council, that there should be a Court of Justice, with Criminal and Admiralty Jurisdiction, for the purposes aforesaid, which Court should be holden at Canton, in the said dominions, or on board any British ship or vessel in the port or harbour of Canton; and that the said Court should be holden by the Chief Superintendent for the time being appointed or to be appointed, by His said late Majesty, under and in pursuance of the said Act of Parliament:

And whereas it is expedient that the said Court of Justice should henceforth be holden in the island of Hongkong:

Now, therefore, in further pursuance of the said Act, and of the powers thereby in Her Majesty in Council in that behalf vested, and of all other powers to Her Majesty belonging or in any wise appertaining, it is hereby ordered by Her Majesty, by and with the advice of Her Privy Council, that the said Court shall henceforth be hokden in the island of Hongkong; and that the same shall have and exercise jurisdiction for the trial of offences committed by Her Majesty's subjects within the said island and within the dominions of the Emperor of China and the ports and havens thereof, and on the high seas within one hundred miles of the coast of China: and it is hereby further ordered, that the said Court shall be holden by the Chief Superintendent for the time being appointed, or to be appointed, by Her Majesty, under and in pursuance of the said Act:

And Her Majesty, by and with the advice of Her said Council, doth hereby confirm in all other respects the said Order of His said late Majesty in Council, dated the ninth December, one thousand eight hundred and thirty-three.

And the Right Honourable the Earl of Aberdeen, one of Her Majesty's Principal Secretaries of State, is to give the necessary directions herein accordingly.

(Signed) C. C. GREVILLE.

And on the 20th June, 1843, the Rules of Practice and Proceeding in the Criminal and Admiralty Court were duly promulgated for general information. Mr. Alexander Scott, on the removal of the Court from Canton, became the Recording Officer in Hongkong. The records do not show that he had previously held the same position in the former place or when he arrived in the Colony.

Alexander Scott, Recording Officer.

Public opinion had now begun to assert itself as to the necessity for a revision of the law as then administered. It was considered ill-judged and impolitic that the Chinese residents should be amenable to their own laws and usages; that though the large bulk of the population was Chinese and mostly of the worse class, still the British laws were admirably suited to their necessities and fully adequate to all their moral and social exigencies. As had been done elsewhere, it was admitted to have been a capital error in English policy to have guaranteed the maintenance of the laws, franchises, and customs, besides the authorized official use of the languages, of conquered countries. The existence of an English *patois*, which was regularly taught in schools and was spoken by thousands in Hongkong, was in itself of immense value, and moreover the disposition and wish of the intelligent classes of the Chinese to know more of us and of our institutions led one to hope that every exertion would be

Agitation for reforms in the administration of justice.

made to encourage the adoption of *our* customs, manners, and language by the natives, and the only effectual way by which this could be attained was by making all residents in Hongkong *amenable to British laws, and to none other whatsoever*. In the House of Commons on Tuesday, the 17th February, 1843, Sir G. Staunton rose, pursuant to notice, to inquire whether it was the intention of Her Majesty's Government to bring any bill into Parliament in the course of the session for the purpose of regulating the administration of justice in Hongkong. Sir R. Peel agreed with the honourable baronet that it was absolutely necessary that measures should be taken to regulate the Courts of Justice at Hongkong; but he thought it would be much better to postpone legislation on the subject until they had had an opportunity of advising with Sir Henry Pottinger, to whom he alluded in flattering terms. Her Majesty's Government, moreover, did not wish to proceed with any measures in general legislation until they possessed the advantage of his advice and opinions. As will be seen, however, native laws, to some extent, were afterwards adopted, at all events as regards criminal offenders, for section 25 of Ordinance 10 of 1844, relating to proceedings before Justices of the Peace, provided that Chinese offenders were to be punished according to Chinese usage. This provision continued in force until as late as 1875, when it was repealed by Ordinance No. 16 of that year, and the third section of the first Ordinance establishing the Supreme Court in the Colony, No. 15 of 1844, also laid down that in all criminal proceedings within the jurisdiction of the Court, it should be lawful to punish the offenders according to the laws of China.

**The Charter of Hongkong.**

The public had not long to wait to see the accomplishment of their wishes in the way of reform generally in Hongkong, for no sooner was the treaty of peace before alluded to duly ratified and exchanged than a Royal Charter declaring Hongkong a separate Colony with established Courts and full legislative powers, and a Commission appointing Sir Henry Pottinger (who until now had governed Hongkong by virtue of his Commission as Superintendent of Trade) the first Governor of the Colony and its dependencies, though retaining his position of Chief Superintendent of the Trade of Her Majesty's subjects in China, were duly proclaimed and published. Sir Henry Pottinger's Commission as Governor under the Queen's Sign Manual, was dated the 5th April, 1843.

**Sir Henry Pottinger, Governor.**

**"The Colony of Hongkong."**

**"The City of Victoria."**

By proclamation dated the 26th June, 1843, Sir Henry Pottinger was further pleased to direct "*that the present city, on the northern side of the island, shall be distinguished by Her Majesty's name, and that all public communications, archives, etc., etc., shall be henceforward dated Victoria.*" Until this time the town proper had

been known by the name of "Queen's Town," though a wish had often been expressed that the name now given might be declared official. As both the Proclamation and Charter are of such lasting importance, they are reproduced in full :—

## PROCLAMATION.

The treaty of peace, ratified under the Signs Manual and Seals of the respective Sovereigns, between Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, etc., etc., and His Imperial Majesty the Emperor of China, having been this day formally exchanged, the annexed Royal Charter and Commission, under the Great Seal of State, are hereby proclaimed and published for general information, obedience and guidance.

His Excellency Sir Henry Pottinger, Bart., G.C.B., etc., etc., has this day taken the oaths of office, and assumed charge of the government of the Colony of Hongkong and its Dependencies.

In obedience to the Gracious Commands of Her Majesty, as intimated in the Royal Charter, the island and its dependencies will be designated and known as "The Colony of Hongkong"; and His Excellency the Governor is further pleased to direct, that the present city, on the northern side of the island, shall be distinguished by Her Majesty's name, and that all public communications, archives, etc., etc., shall be henceforward, dated "Victoria."

God save the Queen.

HENRY POTTINGER.

Dated at the Government House at Victoria, this 26th day of June, 1843.

The following is the Charter :—

## CHARTER OF THE COLONY OF HONGKONG.

Victoria, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith,—To all to whom these Presents shall come—*Greeting:* Know Ye—that We of our especial grace, certain knowledge, and mere motion, have thought fit to erect and do hereby erect our island of Hongkong and its dependencies, situate between twenty-two degrees nine minutes and twenty-two degrees twenty-one minutes north latitude, and the one hundred and fourteenth degree six minutes and the one hundred and fourteenth degree eighteen minutes east longitude from the meridian of Greenwich, into a separate Colony, and the said island and its dependencies is hereby erected into a separate Colony accordingly, to be known and designated as "The Colony of Hongkong." And we do hereby further grant, appoint, and ordain that the Governor for the time being of the said Colony, and such other persons as are hereinafter designated, shall constitute and be a Legislative Council for the said Colony: And we do hereby direct and appoint that, in addition to the said Governor, the said Legislative Council shall be composed of such Public Officers within the said Colony, or of such other persons within the same as shall from time to time be named or designated for that purpose by Us, by any Instruction or Instructions or Warrant or Warrants, to be issued by Us for that purpose under Our Signet and Sign Manual, and with the advice of Our Privy Council, all of which Councillors shall hold their places in the said Council at our pleasure: And we do hereby grant and ordain, that the Governor for the time being of the said Colony, with the advice of the said Legislative Council, shall have full power and authority to make and enact all such

the making all such Laws and Ordinances, the said Governor shall exercise all shall powers and authorities, and that the said Legislative Council shall conform to and observe all such rules and regulations, as shall be given and prescribed in and by such instructions as We, with the advice of Our Privy Council, shall from time to time make for his and their guidance therein : Provided, nevertheless, and We do hereby reserve to Ourselves, Our Heirs and Successors, Our and their right and authority to disallow any such Ordinances in the whole or in part, and to make and establish from time to time, with the advice and consent of Parliament, or with the advice of Our or their Privy Council, all such Laws as may to Us, or them, appear necessary, for the order, peace, and good government of our said island and its dependencies ; as fully as if these presents had not been made : And whereas it is expedient that an Executive Council should be appointed to advise and assist the Governor of Our said Colony of Hongkong for the time being in the administration of the government thereof—We do therefore, by these Our Letters Patent, authorize the Governor of Our said Colony for the time being to summon, as an Executive Council, such persons as may from time to time be named or designated by Us, in any Instructions under Our Signet and Sign Manual, addressed to him in that behalf : And we do hereby authorize and empower the Governor of Our said Colony of Hongkong for the time being, to keep and use the Public Seal appointed for the sealing of all things whatsoever that shall pass the Seal of Our said Colony : And We do hereby give and grant, to the Governor of Our said Colony of Hongkong for the time being, full power and authority, in Our name and on Our behalf, but subject nevertheless to such provisions as may be in that respect contained in any Instructions which may from time to time be addressed to him by Us for that purpose, to make and execute in Our name, and on Our behalf, under the Public Seal of Our said Colony, grants of land to Us belonging, within the same, to private persons, for their own use and benefit, or to any persons, bodies politic or corporate, in trust for the public uses of Our subjects there resident, or of any of them : And We do hereby authorize and empower the Governor of Our said Colony of Hongkong for the time being, to constitute and appoint Judges, and, in cases requisite, Commissioners of Oyer and Terminer, Justices of the Peace, and other necessary Officers and Ministers in Our said Colony, for the due and impartial administration of justice, and for putting the Laws into execution, and to administer, or cause to be administered, unto them such Oath or Oaths as are usually given for the due execution and performance of offices and places, and for the clearing of truth in judicial matters : And We do hereby give and grant unto the Governor of Our said Colony of Hongkong for the time being, full power and authority, as he shall see occasion, in Our name, and on Our behalf to remit any fines, penalties, or forfeitures which may accrue, or become payable to Us, provided the same do not exceed the sum of fifty pounds sterling in any one case, and to respite and suspend the payment of any such fine, penalty, or forfeiture, exceeding the said sum of fifty pounds, until our pleasure thereon shall be made known and signified to such Governor : And We do hereby give and grant unto the Governor of Our said Colony of Hongkong for the time being, full power and authority, as he shall see occasion, in Our name and on Our behalf to grant to any offender convicted of any crime, in any Court, or before any Judge, Justice, or Magistrate within Our said Colony, a free and unconditional pardon, or a pardon subject to such conditions as by any Law or Ordinance hereafter to be in force in Our said Colony may be thereunto annexed, or any respite of the execution of the sentence of any such offender, for such period as to such Governor may seem fit: And We do hereby give and grant unto the Governor of Our said Colony of Hongkong for the time being, full power and authority, upon sufficient cause to him appearing, to suspend from the exercise of his office, within Our said Colony, any person exercising any office or place, under or by virtue of any

Commission or Warrant granted, or which may be granted, by Us, or in Our name, or under Our authority, which suspension shall continue and have effect only until Our pleasure therein shall be made known and signified to such Governor: And We do hereby strictly require and enjoin the Governor of Our said Colony of Hongkong for the time being, in proceeding to any such suspension, to observe the directions in that behalf, given to him by Our Instructions under Our Signet and Sign Manual, accompanying his Commission of appointment as Governor of the said Colony: And in the event of the death or absence out of Our said Colony of Hongkong of such person as may be commissioned and appointed by Us to be the Governor thereof, We do hereby provide and declare Our pleasure to be, that all and every the powers and authorities herein granted to the Governor of Our said Colony of Hongkong for the time being, shall be, and the same are, hereby vested in such person as may be appointed by Us, by Warrant under Our Signet and Sign Manual, to be the Lieutenant-Governor of Our said Colony; or in the event of there being no person upon the place commissioned and appointed by Us to be Lieutenant-Governor thereof, then Our pleasure is, and We do hereby provide and declare that, in any such contingency, all the powers and authorities herein granted to the Governor or Lieutenant-Governor of Our said Colony, shall be, and the same are, hereby granted to the Colonial Secretary of Our said Colony for the time being, and such Lieutenant-Governor, or such Colonial Secretary, as the case may be, shall execute all and every the powers and authorities herein granted, until Our further pleasure shall be signified therein: And We do hereby require and command all Our officers and ministers, civil and military, and all other the inhabitants of Our said Colony of Hongkong, to be obedient, aiding, and assisting to such person as may be commissioned and appointed by us to be the Governor of Our said Colony of Hongkong, or, in the event of his death or absence, to such person as may, under the provision of these Our Letters Patent, assume and exercise the functions of such Governor: And We do hereby reserve to Us, Our Heirs and Successors, full power and authority from time to time to revoke, alter, or amend these Our Letters Patent, as to Us or them shall seem meet: In witness whereof, We have caused these Our Letters to be made patent.

Witness Ourselves, at Westminster, the fifth day of April, in the sixth year of Our Reign.—(1843.)

By the Queen Herself,

EDMUNDS.

English Law.

Power, as may be seen, was thus given to the local legislature to enact all such Laws and Ordinances as might be required for the peace, order, and good government of the Colony, and, taken together with section 3 of the Treaty of Nanking previously quoted, there can be no doubt that *English* law was what was meant and introduced by the terms of the Charter, and that this has ever been so understood may be gathered from the different Ordinances and Proclamations passed from time to time and reciting such fact.*

* Ordinance No. 15 of 1844 passed on the 21st of August, 1844, establishing a Supreme Court of Judicature at Hongkong, in its third section expressly declared "that the law of England shall be in full force in the said Colony of Hongkong, except where the same shall be inapplicable to the local circumstances of the said Colony or of its inhabitants: Provided, nevertheless, that in all matters and questions touching the right or title to any real property in the said Colony, the law of England shall prevail, and

Appointments consequent upon grant of Charter.

With regard to new appointments in Hongkong consequent upon the grant of Charter, it was felt that something should be done as soon as possible to atone for past neglect by placing the island establishments on a proper footing. Parliament had been moved upon the subject in April, 1843, by Dr. Bowring with respect to consular appointments, when Lord Stanley stated that "no appointment would be made except that of Sir Henry Pottinger, and that only for the purpose of giving him legal authority to act. None others had been made, and probably none would be for some time." On the 26th June, however, after the proclamation of the Charter, several new appointments were duly announced, the Office of Deputy Superintendent of Trade, previously held by Mr. Johnston, being declared abolished and that gentleman appointed "Assistant and Registrar to the Chief Superintendent," and amongst other appointments gazetted were those of Lieut.-Col. Malcolm, C.B., as Colonial Secretary of Hongkong; Major William Caine, as Chief Magistrate of the Colony; Charles Batten Hillier, Esquire, as Assistant Magistrate, and Lieut. William Pedder, R.N., as Harbour Master and Marine Magistrate. Appointments to the Legislative and Executive Councils were duly announced on the 21st August and included the name of Major Caine, the Chief Magistrate, it being commanded at the same time that gentlemen so appointed were to be styled in addition to their usual addresses "*The Honourable*" in all official and other documents. On the same date Richard Burgass, Esquire,* was appointed legal adviser to the Government of Hongkong, and to officiate as Clerk of the Legislative Council, pending the pleasure of Her

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that no law shall be recognized in the said Colony, which may in any way derogate from the sovereignty of the Queen of England." This enactment, except its last provision, was renewed by Ordinance 6 of 1845, repealing it; but, for some cause not explained, the year following another Ordinance was passed (Ordinance No. 2 of 1846), to amend the former one by declaring that "only such of the laws of England as existed when the Colony obtained a local legislature, that is to say, on the 5th of April, 1843, should be of force therein," leaving it therefore to the local legislature to extend to this Colony only such laws passed by the British Parliament as it might deem expedient from time to time. By section 7 of Ordinance No. 12 of 1873, (the Supreme Court Reconstitution Ordinance) the same reservation was made as to such English laws alone being in force as existed when the Colony obtained a local legislature. There can be no doubt as to the introduction of English law in Hongkong. From the records it is clear that the authorities have all been of one mind on that point. The answer of Chief Justice Hulme to a Chinese address in 1847, at the time of his suspension, shows this (*infrà*, Ch. viii.)—See also Lord Grey's reply (to a memorial on local grievances) in October, 1849, (*infrà*, Ch. xi.); Proclamation of Sir John Bowring to the Chinese in October, 1855. (*infrà*, Ch. xvi.); Government Notification of 10th July, 1857, regarding illegal combinations respecting tradesmen or mechanics (*infrà*, Ch. xviii.); Sir Hercules Robinson's speech in introducing Ordinance No. 30 of 1860 relating to the Press of the Colony, on 17th November, 1860. (Ch. xxxi.); Proclamation of 19th January, 1861, of the Earl of Elgin in taking over Kowloon (*infrà*, Ch. xxxii.), and finally Sir Fielding Clarke's judgment in *Belilios v. Ng Li Shi*, reported in *The Hongkong Daily Press*, of 26th January, 1893. Another important provision in connexion with this matter as regards British subjects is the Consular Ordinance No. 1 of 1844, passed on the 24th January, 1844, by section 1 of which the law of England was extended to all Her Majesty's subjects within the Dominions of the Emperor of China, etc., thereby shewing the intention of the legislature at its inception.

* M.A., of the Middle Temple, Barrister-at-Law, called the 11th January, 1839.

Majesty's Government,"—the first we have, of an appointment of the kind under the Government. Mr. Burgass, it may be added, was a personal friend of Sir Henry Pottinger, and had arrived in the Colony from Bombay in June, 1843.

Justices of the Peace.

On the 27th June, 1843, the Governor, under powers conferred by the Charter, appointed forty-four of the leading inhabitants as Justices of the Peace. These were duly notified as being Her Majesty's Justices of the Peace *in China*, and were required, previous to entering upon the discharge of their functions, to subscribe to an oath as hereinafter given, before either of the following officers, viz., the Assistant and Registrar to the Chief Superintendent of Trade, the Chief Magistrate, the Assistant Magistrate, and the British Government Agent at Macao. The oath was in the following form :—

I, A.B., do hereby swear that I will bear true and faithful allegiance to Our Sovereign Lady Victoria, Queen of the United Kingdom of Great Britain and Ireland, etc., etc., and that I will well and truly, according to the best of my ability, skill, and understanding, and without fear, favour, or affection, perform, do, and fulfil the duties and powers of a Justice of the Peace, over and towards all subjects of Her said Majesty presently or hereafter residing within, or resorting to, *the Dominions of the Emperor of China*—So help me God.

Sworn before me, at this day of 1843.

Much amusement was caused by the ending of the oath, by which, as is seen above, the Justices were to act "in the Dominions of the Emperor of China," Hongkong though intended, not being even mentioned. A Government Notification rectifying the mistake duly appeared on the 10th July following, the form of oath being amended by the insertion of the words "Her Britannic Majesty's Colony of Hongkong and its Dependencies or" before the concluding words "the Dominions of the Emperor of China" in the oath. On the same day, appeared a notification appointing Lieutenant Thomas Wade, of Her Majesty's 98th Regiment, who had been reported qualified for the duty, and who, as will be seen hereafter, played such an important part in Chinese affairs, Chinese Interpreter to Her Majesty's Land Forces in China. Mr. Wade was attached to headquarters.

Lieut. Thomas Wade, Chinese Interpreter

Revocation of Commissions of the Peace.

The disproportion of Justices of the Peace to the Police Constables who only numbered 28, was the subject of much criticism, disappointment being also expressed at some of the more respectable Parsee merchants not having been included in the list of Justices. The omission was regarded as an undeserved slight upon the Parsee community, to whom, it was alleged, was due the immense development of the trade between China and India, and who here and at Bombay transacted nearly one-half of the

whole of the British trade with China. But the Home Government was not very long in making itself heard, for by a Government Notification of the 30th May, 1844, the public were informed that the several Commissions had been revoked and cancelled by direction of Her Majesty's Government who had directed "that such powers should be restricted to Her Majesty's Consuls at the Five Ports, and to the Vice-Consuls in subordination to them." All persons possessing such Commissions were accordingly requested to return them. Thus ended one of those amusing episodes in the early history of the Colony which not infrequently, for want of matter or other local topics for discussion, until the decisions of the Home Government were made known, usually kept the press "going."

Land.

Under the Charter previously recited, the Governor of the Colony for the time being in the name of Her Majesty, and on Her behalf, subject to Her Majesty's Instructions, was fully empowered as may be seen to make and execute, in the name and on behalf of Her Majesty under the Public Seal of the Colony, grants of land within the Colony to private persons for their own use and benefit, or to any persons, bodies politic or corporate, in trust for the public uses of Her Majesty's subjects there resident or any of them. This was nearly two years after the first land sale previously mentioned. Her Majesty's Instructions also dated the 5th April, 1843, were addressed to the then Governor Sir Henry Pottinger, and directed that no land should be sold or let, except at public auction, and that at every such auction the lands to be then sold or let should be put up at a reserved or minimum price equal to the fair reasonable price and value or annual rent thereof. These Instructions further directed the Governor to ascertain what particular lands it might be proper to reserve in the said Colony for public roads and other internal communication, whether by land or by water, or as the sites of towns, villages, churches, school-houses, or parsonage-houses, or as places for the interment of the dead, or as places for the future extension of any existing towns or villages, or as places fit to be set apart for the recreation and amusement of the inhabitants of any places which it might at any future time be expedient to erect, form, or establish on the sea coast, or which it might be desirable to reserve for any other purposes of public convenience, utility, health, or enjoyment, and the Governor was to cause such tracts, pieces, or parcels of land as might appear best adapted to answer and promote the several public purposes before mentioned, to be distinguished on the public charts of the said Colony or in some other authentic manner, and not on any account or on any pretence whatsoever grant, convey, or demise to any person or

persons any of the lands so specified as fit to be reserved as aforesaid, nor permit or suffer any such lands to be occupied by any private person for any private purpose.

On the 10th April, 1843, the Land Officer had been again appointed, and a Government Notification of that date was issued as follows :—

GOVERNMENT NOTIFICATION.

"In consequence of instructions recently received from Her Majesty's Government, and until defined regulations can be framed and promulgated grounded upon those instructions, His Excellency Sir Henry Pottinger, Bart., K.C.B., etc., etc., is pleased to notify as follows :—

1st.—All persons holding land of any denomination in the island of Hongkong are hereby required to send in the fullest explanations as well as the proofs they possess of their claims to such land, to the Land Officer with the least possible delay.

2nd.—The Land Officer has been authorized and instructed to prevent the commencement of any further buildings upon, or clearing away of, locations until final arrangements can be made.

The Land Officer has also been authorized and instructed to take summary measures, in concert with the Chief Magistrate, to put a stop to all buildings that may be in progress on locations of whatever denomination, where the explanation or proof submitted may appear to him to be at variance with his present instructions and also in cases where the explanation and proofs now called for may be delayed beyond a reasonable time.

3rd.—The Land Officer has further been authorized and instructed to summarily prevent the progress of all buildings on locations which may, in his opinion, encroach on the present, or any future line of roads or streets, and to oblige all persons to confine themselves to the exact dimensions of the lots which were originally allotted to them.

4th.—It has been repeatedly intimated that the terms and tenure of holding all lands on the island of Hongkong were to depend solely upon the pleasure and commands of Her Majesty's Government, and the information called for in this notification is required before such terms and tenure can be announced to the public.

By Order

(Signed) RICHARD WOOSNAM."

Hongkong, Government House, 10th April, 1843.

In August, 1843, the Governor received instructions from Lord Stanley, then Her Majesty's Principal Secretary of State for the Colonies, directing him to abstain from alienating any of the land on the island for any time of greater length than might be necessary to induce and enable the tenants to erect substantial buildings, etc., and refusing to sanction any such grants as had already been made, but with a promise that an inquiry should be instituted into the equitable claims of all holders of land to a confirmation, either permanent or temporary

of their titles. The following Government Notification was thereupon issued :—

GOVERNMENT NOTIFICATION.

"His Excellency the Governor, having had under his careful consideration the instructions which have been received from Her Majesty's Government on the subject of Crown lands in this Colony, is pleased to publish the following extracts of a despatch from Her Majesty's Principal Secretary of State for the Colonies :—

"Sir Henry Pottinger is to abstain from alienating any of the land on the island, either in perpetuity, or for any time of greater length than may be necessary to induce and enable the tenants to erect substantial buildings, etc. But with the general prohibition against the alienation of Crown Lands, and with the general refusal to sanction any such grant as may have already been made, Lord Stanley would connect a promise, that immediately on the establishment of a regular Government in the place, an inquiry should be instituted, by some competent and impartial authority, into the equitable claims of all holders of land, to a confirmation, either permanent or temporary, of their titles, so far as they could be confirmed consistently with a just regard to the interests of society at large."

With advertence to the principle laid down in the above extracts, it will be understood, that Her Majesty's Government do not recognize the validity of any grants or sales of land that may have been made, or may have taken place, under any authority whatsoever, previous to the exchange of the ratifications of the treaty, upon which event the island of Hongkong became a *bonâ fide* possession of the British Crown, and from which day the payment of rents derivable from such land will only be held to commence. In obedience to the intimation conveyed in one of the preceding extracts, His Excellency the Governor in Council is pleased to appoint A. T. Gordon, Esquire, Land Officer, etc., Captain De Havilland, H. M. 55th Regiment, Assistant Surveyor, and Charles Edward Stewart, Esquire, Treasurer and Financial Secretary to Government, to be a Committee, assisted by Richard Burgass, Esquire, Legal Adviser to the Government, to inquire into the equitable claims of all holders of lands, to define the classes to which particular lots shall henceforward belong, as well as their future annual rent, and to arrange for the disposal of further lots regarding which Her Majesty's instructions prescribe : "And it is Our further will and pleasure, that no such lands shall be sold, or let, except at public auction ; and that, at every such auction, the lands to be then sold or let, be put up at a reserved, or minimum price, equal to the fair reasonable price and value or annual rent thereof."

By Order of His Excellency the Governor, and Commander-in-Chief of Hongkong.

RICHARD WOOSNAM,
Officiating Deputy Colonial Secretary."

Government House, Victoria, Hongkong.
August 21, 1843.

Act 6 and 7 Vict., Cap. 80.

On the 22nd August, 1843, the Act 6 and 7 Vict., Cap. 80, "An Act for the better Government of Her Majesty's Subjects resorting to China" was passed, which made it lawful for Her Majesty to authorize the Superintendent of Trade in China, so long as he was Governor of the island of Hongkong, to enact, with the advice of the Legislative Council of the said island, all such laws and ordinances as might from time to time be required

for the peace, order, and good government of Her Majesty's subjects being within the Dominions of the Emperor of China, and under the said Act were enlarged the powers already possessed by the Superintendent of Trade, by rendering legal any Acts passed by him in Council, even though they might be contrary to preceding Orders of Her Majesty's Privy Council.

Death of Mr. J. R. Morrison.

Mr. J. R. Morrison, the able Chinese Secretary to the Superintendent of Trade, and officiating Colonial Secretary of Hongkong, whose death the Governor announced as a "positive national calamity," from which much may be gathered, died at Macao on the 29th August, 1843. He had been on the establishment of the Colony from its foundation, and is otherwise so well known to history in connexion with these parts that no mention need here be made of his services. The deceased died intestate, administration to his estate being granted on the 28th September, 1843, to three persons, viz., Alexander Matheson, Alexander Anderson, and Charles Edward Stewart, the latter the Treasurer and Financial Secretary to the Government, who for some time afterwards appears to have been the officer appointed to act in similar cases.

Crime in 1843.

The state of crime during 1843 showed no improvement over the previous year. The number of nightly burglaries and gang robberies had alarmingly increased, and the creation of a body of Justices of the Peace, none of them of the slightest use and exceeding in number one-third of the whole Constabulary Force, was considered an absurdity. The decision of the Home Government as to the Force was not yet known—though apparently the primary reason for an insufficient Police Force was the want of funds, quite apart from the desirable element for the composition of such a Force being also wanting at this time. The Chief Magistrate, as he had already done in October, 1842, had found himself compelled again during the year to issue a proclamation prohibiting the Chinese from being out, without lanterns, between the hours of 8 and 10 p.m., and after that time "not one individual to be seen out walking," and all Chinese boats, under penalty of severe punishment, were also prohibited from moving about the harbour after gun-fire at 9 p.m., until gun-fire the next morning. Crime was so rampant at this period that a correspondent of the local paper, signing himself "An Old Stager," advised the residents, who had not yet been robbed "but who would soon be," "to nail their boxes to the floor, lock them and sleep with a good pair of loaded pistols under their pillows, for as soon as the moon got into her first or last quarters, the robberies began." Amongst others robbed during the year, the Governor and the Chief and Assistant Magistrates had equally been victims. The Chief Magistrate, with the co-operation of the

military and naval authorities had carried out his threat of sending away from the island a band of miscreants who had made Hongkong their home, but where he derived his powers from or with what result the expulsion was effected, is not apparent. The town up to this period was not lit at night, and it was dangerous to move out at all without running the risk of being attacked.

**Curious Sentences.**

An instance of the curious sentences passed at this period was that inflicted for robbery upon a Chinese convert who wore European dress, doubtless with an object. He was sentenced to receive sixty strokes, and to hard labour for four months. With his "queue" cut off, a little before sunset, the culprit was marched off from prison dressed in his own clothes and paraded down the Queen's Road, then, in the presence of a large concourse of Europeans, Lascars, and Chinese, flogged by a European, who, the report says, "did not strike the blows so severely as the usual rattaner would have done." After receiving this portion of his sentence, the man was taken back to Prison.

**Early history of the Gaol.**

The following interesting report, taken from the records of the time, shows the number of criminals, European and Chinese, lodged in the gaol at Hongkong from the 9th August, 1841, the date of its institution, to the 8th September, 1843. It is also illustrative of the working of the prisons and the mode of punishment of prisoners in the earliest days of the Colony and fully descriptive in respect of every detail connected with that institution, besides showing that the Governor himself at times had acted as a Magistrate, or that such cases as he had himself dealt with had been referred to him for adjudication under the Chief Magistrate's warrant of appointment of the 30th April, 1841:—

"This record is in two parts. The first contains the names of 482 prisoners, of whom 430 are Chinese, 28 Lascars, 9 Portuguese, 5 Sepoys, 1 American, the others are Europeans. The second part contains the names of 134 persons, nearly all of whom are European seamen. Among this number, there have been a few, perhaps 20 soldiers, who have been sentenced by Court-martial. The others the seamen have been sentenced by the Marine Magistrate, excepting a very few, upon whom sentence has been passed by the Governor. Their punishment has been solitary confinement, which has varied, in different cases, from two to 84 days. Generally, the confinement has continued for two or three weeks.

The prison, in which they are confined, is 64 feet by 30, divided into two rows of cells, twelve in all. The rows are separated by a passage about eight feet broad. Each prisoner has usually, if not always, had a separate cell, which is clean, well lighted and ventilated; and each person is provided daily with a pound of beef and a loaf of bread. On the 22nd of May, 1843, two Europeans were sentenced, by Court-martial, to be transported for life. The crimes of the seamen are, for the most part, disobedience to orders and disorderly conduct.

With the sailors, and often with the soldiers too, drunkenness is the crime, or immediate "*cause*" of the crime, for which they have to endure punishment.

For the lodging of the Chinese prisoners, two buildings are appropriated, one 79 feet by 29; the other 49 by 16 feet. There is a square open court, between them, about 78 feet by 30, in which the prisoners can air and wash themselves, take exercise, etc. The largest of these two buildings is divided into two apartments, one large and one small, both occupied by the labouring gang; both have good floors, are without ceiling, and well ventilated. The smallest of the two buildings—designed for persons not sentenced—contains three rooms, each 17 feet by 16, with floors and beds; on one side of these rooms is a broad verandah, protecting them from the heat and rain, and rendering them not less, but rather more, comfortable than they would be in the common houses of the middling classes of the Chinese.

The punishments inflicted on the Chinese are flogging, hard labour, and confinement. All, or nearly all, are flogged, the number of blows varying from 20 to 100. Few only receive a hundred, many have 40 or 50, the latter number is the most common. These are given in public. The criminal, with a label on his back, written in Chinese characters, is conducted from the prison to the whipping stand at the west end of the Upper Bazaar, and there undergoes the sentences of the law, and returns again to prison. The labouring convicts, and those in confinement, are kept with irons on their legs, which renders escape difficult. Still a few, in all about twenty, have made their escape, principally during the first year after the prison was built. During the last twelve months, only two have escaped, and these while out at work, as were, indeed, many of the others.

The period of imprisonment has varied in length from two days to four years. Two only have been sentenced to four years; two to three years; four to two years and six months, twenty-three to two years; twenty-four to eighteen months; two for one year; the remainder all for a less period. Twenty-two of these Chinese prisoners were sent from Chusan by the Commander-in-Chief of the Expedition. These were not subjected to flagellation; they arrived in May or June, 1842, and were released in October, soon after the announcement of the news of peace.

For food the Chinese prisoners have been constantly supplied with rice, in quantities as large as they can consume, and occasionally they have had salt fish, vegetables, etc. The purveyor of the prisoners has been allowed, for each man, one dollar and a half per mensem. This sum, he says, has been more than sufficient in the hot months, while in the cold season it has been barely enough to cover the monthly expenditure. For drink they have had pure water from the hills. Their clothing and bedding have been such as they have been able to procure for themselves, except on one occasion, when a quantity of jackets were furnished to protect them from the winter's cold.

Those sentenced to hard labour have been employed principally on the roads. They have been called out at 6 a.m. and returned at 5 p.m., and are allowed one hour for breakfast, and one for rest at midday. Sundays always excepted, on which they do no work, and which to them has been, as they very appropriately call the Sabbath, *an-si-yi* "days of rest."

The prisons stand just within the inclosure, which surrounds the premises of the Chief Magistrate, directly below his own house, where they are under the surveillance of a strong military guard, also just within the inclosure. The scavenger's duties are regularly performed, at a given hour, every night; and the apartments are thoroughly washed out once or twice every week. And the prisoners are always allowed a full supply of fresh water for washing and bathing. The site of the buildings is airy, and elevated perhaps three hundred feet above the sea, from which it is distant fifty or sixty rods.

The health of the prisoners deserves particular notice. Of the whole number of Chinese and foreigners who have been confined only nine have died. The average number in prison has been about sixty, and this for the worst part of the three seasons of 1841, 1842, and 1843. Of these nine, some were debauched opium-smokers, who died for want of that which caused their death. Two or three only died of fever. The total amount of sickness has been very small. Most of the sufferings have been from cutaneous disorders, contracted before entering the prison. Medicines and surgical aid have always been administered promptly when required.

It might indeed be worth while to inquire, and to ascertain, if possible, why there has been so much less sickness in the prisons than in the barracks at Hongkong, during the last twenty-six months. Of seventy men in the Artillery lines, not more than fifty were reported fit for duty; while not more than three, of nearly an equal number in the jails, were unfitted by sickness to perform "hard labour." In not a few cases men have gone in sick, and come out well."

**Arrival of Major-General D'Aguilar, C.B.**

Major-General D'Aguilar, C.B, appointed to command the land forces in China and also Lieutenant-Governor of Hongkong, whose co-operation afterwards with the civil authorities, in repressing crime, proved so valuable, arrived by H.M.S. *Castor*, on the 27th December, 1843, his Commission as Lieutenant-Governor being duly published on the 11th January, 1844.

**Conclusion.**

Such are the facts which constitute the earlier period of the legal history of the Colony prior to the opening of the Legislative Council under the Charter of Justice, and at their conclusion may be said to have begun a fresh era in regard to the administration of justice. 'Miraculous,' indeed, had been the progress of the island at this stage, deserving the greatest praise for those upon whom devolved the responsibility of settling the Colony.

# CHAPTER I.

## 1844.

**First sitting of the Legislative Council.—Exorbitant Table of Fees in civil matters in Chief Magistrate's Court.—An Indian view.—Taxes on justice.—Increase of public business.—Mr. C. B. Hillier, Recording Officer to Criminal and Admiralty Court.—Macao—its tenure by the Portuguese. Consular Ordinance No. 1 of 1844.—Ordinance No. 1 of 1881.—Slavery.—Ordinance No. 1 of 1844 disallowed.—Imperial Statutes on Slavery.—Land.—Ordinance No. 3 of 1844.—Opening of Criminal Court.—First Court held in China for trial by Jury.—Sir Henry Pottinger's address to the Jury.—Presentments by Jury.—True bills for murder.—Public opinion of the Criminal Court.—Dissatisfaction at non-opening of Supreme Court under the Charter.—Dissatisfaction at civil cases being determined by the Chief Magistrate.—Sir H. Pottinger endeavours to appease public mind.—Ordinance No. 6 of 1844.—Complaints as to Executive and Legislative Councils.—Crime and Police inefficiency.—The Chief Magistrate as head of the Police and Prisons.—Capt. Haly, first Superintendent of Police.—Capt. Bruce succeeds Capt. Haly.—Regulation of boats and junks.—Suspicious character of native watchmen.—Notice to householders.—Precursor of registration of Chinese inhabitants.—Major-General D'Aguilar and military volunteers as an addition to Police Force.—Transportation.—Queen's Order in Council of 22nd May, 1840. Act 6 Geo. IV.—Mr. P. I. Sterling, First Attorney-General of Hongkong.—The Chief Justiceship.—Queen's Order in Council of 17th April, 1844.—Hongkong a place of trial for British offenders in China.—Supplementary Treaty with China. Hostile comments.—Home and French criticisms.—Sir Henry Pottinger vindicates himself.—*The London Chronicle*.—Registration of Chinese.—Public opinion.—Ordinance No. 16 of 1844.—Retirement of Sir Henry Pottinger.—Approval of his services by Her Majesty's Government.—Mr. J. F. Davis succeeds Sir H. Pottinger.**

Chap. I.

First sitting of the Legislative Council.

THE Legislative Council of Hongkong, constituted under the Charter, assembled for the first time on Thursday, the 11th January, 1844, the Honourable Major-General D'Aguilar and the Honourable Major Caine, the Chief Magistrate, both previously appointed members of the Executive and Legislative Councils, taking the usual oaths and their seats, under a salute from the Battery. Mr. Richard Burgass, the Legal Adviser to the Government, previously mentioned, also took the oaths as Clerk of the Council.

Exorbitant Table of Fees in civil matters in Chief Magistrate's Court.

A table of fees to be taken in the Chief Magistrate's office in civil matters, having been approved of by the Governor-in-Council, was published on the 18th January, 1844, for general information. These fees were generally considered exorbitant and calculated to defeat the ends of justice. Much stress was laid upon this point and the attention of the English press directed to the subject, regard being had especially to the fact that the Magistrate in whose Court the fees were to be levied was no lawyer at all, the gist of the comments being directed doubtless to the necessity for the immediate appointment of a Judge under the Charter. An Indian newspaper, commenting upon this table of fees, termed it extravagantly high and suggested that, if the Legislative Council did not see the propriety of reducing the fees, the community should refer the question to

An Indian view.

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the Imperial Government. In an action to recover $250, the charge for a summons was $4; for a warrant to apprehend after summons served, $20; for calling on the case for inquiry or hearing it, $20; and the fee when the case was decided or judgment entered up, $40, or altogether $84 of Court fees to recover $250, or thirty-three per cent., and this, as the paper remarked, independent of Attorney's and Counsel's fees. "Why," it continued to say, "the old Mahomedan Government of India never exacted more than *one-fourth* of the demand as the Government share of the suit, and this was thought extremely oppressive and cruel. These fees were either disguised to raise a revenue or restrain litigation,"—either of which courses was thought impolitic. There is no maxim in the science of legislation more indisputable than that taxes on justice are the most imprudent of all taxes, as all legal taxation has an inevitable tendency to restrain a resort to Courts dispensing justice, and the heavier the taxation, the more complete the denial of justice. Whatever the cause for thus levying such heavy Court fees, suffice it to say that it was another of the causes for discontent against the then form of Government and of the legislature in particular, the table of fees under consideration being one of the measures, it was alleged, of the legislative wisdom of the "military lawgivers," the legislature being composed then mostly of military men.

**Taxes on justice.**

**Increase of public business.**

Public business had now become so pressing that the Governor intimated he could not devote more than one day in the week in the future for the reception of visitors.

**Mr. C. B. Hillier, Recording Officer to Criminal and Admiralty Court.**

On the 19th February, 1844, Mr. C. B. Hillier, the Assistant Magistrate, received the appointment of "Recording Officer to the Criminal and Admiralty Court, at Hongkong," presumably in succession to Mr. Alexander Scott, who had died on the 24th August, 1843. This appointment, no doubt, was made in anticipation of the early opening of the aforementioned Court, for on the 24th February, 1844, appeared a proclamation that, on the 4th March following, there would be holden a session of the "Court of Justice with Criminal and Admiralty Jurisdiction for the trial of offences committed by Her Majesty's subjects in the island of Hongkong or within the Dominions of the Emperor of China."

**Macao—its tenure by the Portuguese. Consular Ordinance No. 1 of 1844.**

The first Ordinance passed by the Governor-in-Council was the Consular Ordinance numbered No. 1 of 1844 of 24th January, 1844, published for general information on the 26th of January. Its purport was to render British subjects within the Dominions of the Emperor of China subject in all matters to the law of England, and to extend the jurisdiction of the Courts of Justice at Hongkong over the same. By the fourth

section *Macao* was included and deemed to be "within the Dominions of the Emperor of China for the purpose of this and other like Ordinances." When this Ordinance was drafted it evidently had escaped the attention of the authorities that, if Macao was not then in the proper sense of the term a Portuguese possession, owing to the existing terms of their tenure of the Settlement from the Chinese, at all events we could hardly, under the circumstances, claim jurisdiction, in the absence of a treaty, over those of our subjects who had resorted thither, and that a gross breach of international law and etiquette had been committed. The inclusion of Macao within the jurisdiction of the Supreme Court was not made, of course, without causing considerable controversy in Hongkong and excitement at Macao, where it was alleged not unnaturally that Macao was as much a Portuguese Colony as Hongkong was British.* But all this, except as matter of history, is no longer of importance. By the treaty between Portugal and China, ratified on the 28th April, 1888, the latter confirmed in its entirety the second article of the protocol of Lisbon of the 26th March, 1887, which related to the perpetual occupation and government of Macao by Portugal. By Ordinance No. 1 of 1881 (14th March, 1881), provision is made for the surrender of fugitive criminals fleeing to this Colony from Macao to the latter Government.

**Ordinance No. 1 of 1881.**

**Slavery—Ordinance No. 1 of 1844, disallowed.**

On the 28th February, the local Ordinance, No. 1 of 1844, relating to slavery, was passed. That slavery in its worst forms existed in the Colony was an undeniable fact, and it told much in favour of the authorities that the very first enactment passed by them related to such an important subject and had reference more to the Chinese than to any other nationality. This single Ordinance alone, it was hoped, would ultimately lead to desirable changes in the habits and customs of the Chinese.

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* The matter really seemed to hinge upon the question whether the Portuguese had sovereign authority in Macao or not, and certainly the Portuguese had not much to show for this. H. M. Plenipotentiary and Superintendent of Trade, after the Ordinance had been confirmed by the Home Government, in his instructions to the British Agent at Macao, desired him, in case of any British subject being prosecuted by the Law Court of that place, "to advise him to enter a protest against the jurisdiction." Later on, according to the testimony of Sir John Davis, as contained in his work on "*The Chinese*," he showed that the Portuguese were at Macao by mere sufferance of the Chinese, that they paid an annual ground rent, that their forts were inspected by Chinese officers, that the Chinese levied duties on the Portuguese shipping, that a mandarin resided in the town and governed it in the name of the Emperor of China, that the Portuguese were not allowed to build new churches or houses without licence, and that the Chinese population were entirely under the control of the mandarins. Sir John Davis added "nothing, therefore, can be further from the truth that the Portuguese possess the sovereignty of that place." and it was doubtless acting upon that presumption that Captain Keppel, in June, 1849, proceeded to release Mr. Summers, confined, as he believed, illegally in the Macao Gaol, in the summary manner he did, as recorded in Chapter xi. *infra*. Chief Justice Hulme subsequently held, in July, 1849, that Macao was *not* within the jurisdiction of the Supreme Court of Hongkong—Robertson *v.* McSwyney, Chapter xi. *infra*.

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Not the least commendable part of the Ordinance was that which declared that the emancipated slave who was unable to earn a livelihood was to be supported by the Colony until he was put in a way to support himself; in the case of females particularly, the propriety of this was obvious.

Imperial Statutes on slavery.

But the Ordinance was subsequently disallowed by Her Majesty, as it was considered that the Imperial Statutes for the abolition of slavery extended by their own proper force and authority to Hongkong.

Land.

Great dissatisfaction prevailed at this time amongst the resident holders of land at the course the Government was pursuing in adjusting the land tenure and the claims of those holding under grants made by the "Deputy Superintendent charged with the Civil Government of the Island." It was considered an act of injustice on the part of Government to sell lands without previously giving notice to the original holders; for it was urged that, in consequence of not having had notice of the intention of Government to resume and sell such lots of ground as they might be pleased to take from them, they were placed in a most disadvantageous position, and one in which they could not protect themselves. The terms were considered unjustifiably hard and without precedent, and the conduct of the Legal Adviser to the Government at a recent land sale, who stood ready, it was alleged, "to brow beat down all opposition," was strongly commented upon.

In this connexion it may be mentioned that the Committee appointed on the 21st August, 1843, sent in a report to the Government, dated the 4th January, 1844, that the sale of the marine lots gave an average annual rental of nearly £350 per acre, and, looking to the fact that this was the result of a public sale, and that the purchasers were under the impression that the time for which the land was disposed of was unlimited, they recommended that all the marine lots hitherto sold or granted should be recognized and confirmed for a period of 75 years, excepting those which had been abandoned or forfeited, and considering that, in some instances, the rate of annual rent at £20 per quarter acre at which inland town lots had been sold was too low, and in others too high, they further recommended that all lots, other than marine, which had hitherto been granted or occupied should be classified and rated according to a scale determined with reference to locality.

On the 13th January, 1844, the Committee recommended

a system of classification of lots (other than marine) for rental as follows :—

| No. of Classes. | At the rate of per acre per annum. £. s. d. |
|---|---|
| 1 | 160. 0. 0 |
| 2 | 120. 0. 0 |
| 3 | 100. 0. 0 |
| 4 | 80. 0. 0 |
| 5 | 60. 0. 0 |
| 6 | 40. 0. 0 |
| 7 | 20. 0. 0 |
| 8 | 12. 0. 0 |
| 9 | 6. 0. 0 |
| 10 | 3. 0. 0 |
| 11 | 2. 0. 0 |
| 12 | 1. 0. 0 |
| 13 | 10. 0 |

Ordinance No. 3 of 1844.

On the 28th February, 1844, Ordinance No. 3 of 1844 was passed for the registration by the Land Officer, in the Land Office, of all dealings with land, or its disposition by deed or will, and of judgments, and providing for the priorities of registered documents, and the method of registration by memorial. This Ordinance also provides for the deposit in the Land Office of deeds and documents for safe custody and is still in force without alteration or amendment.

Opening of Criminal Court. First Court held in China for trial by Jury.

As duly advertized, the Criminal Court opened on the 4th March, 1844, at ten o'clock in the forenoon. The Court was held in a temporary building near Government House. The Governor Sir Henry Pottinger, and the Lieutenant-Governor Major-General D'Aguilar, both sat as Judges of the Court, the latter being in uniform, whereas the Governor sat in plain clothes. Mr. Burgass officiated as Crown Prosecutor and Mr. Hillier as Registrar. After the Court had been opened by Mr. Hillier reading the proclamation stating the purposes for which it was held, Mr. Farncomb, the Coroner, presented an inquest. Several residents were called and sworn in as a Grand Jury, Mr. Patrick Stewart being chosen foreman. His Excellency Sir Henry Pottinger then read the following address to the Grand Jury :—

Sir Henry Pottinger's address to the Jury.

"Gentlemen of the Grand Jury,

In addressing you on your being sworn in, my remarks shall be as few and brief as possible. We are assembled to-day to assist in the discharge of the most important duties that can devolve on us as men and as members of society: those of administering justice to our fellow-subjects and upholding the laws of our country and the dignity and honour of our Gracious Sovereign. In the wholly unprecedented situation in which I am placed, it would be equally useless and preposterous for me to attempt to enlarge on the functions you have to perform. I am not aware that the cases, which will be laid before you, have anything technical or peculiar in them. You are, after examination of the witnesses and full deliberation, to say whether these cases come under the head of murder or the less criminal, though still highly

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serious charge, of manslaughter. Should you find any point of difficulty, I cannot say that I will instruct you in it, but this I may say, that I will be happy to give my opinion backed by the best advice that I can obtain. I will not dismiss you to your labours without reminding you that in all cases where you have doubts it is a wise and humane principle of the law to give the advantage of those doubts to the accused, and our observance of this rule is more especially necessary when it is remembered that he can have no Counsel to plead for him.* I wish to God my share of the investigations on which we are about to enter had fallen into more qualified hands, but I can at least promise that I sit here to exercise the most rigid impartiality as well as to temper justice with mercy, and I am assured that you will most cordially and anxiously unite with me in the same feeling."

**Presentments by Jury.**

Immediately thereafter, Mr. Hillier presented the Jury with an indictment against a seaman of the *Harlequin*, a native of Manila, charging him with the murder of the second mate on the high seas. The Grand Jury then retired into an adjoining room, and the Court proceeded to swear in petty jurymen. A true bill was found against the seaman for wilful murder. A true bill was also found against a marine artilleryman of H. M. S. *Driver* for the manslaughter of a Chinese boatman. In the afternoon, the seaman was tried before the Governor alone, the General having previously retired, and a petty jury, who returned a verdict of wilful murder against the prisoner, but recommended him to mercy owing to the provocation he had received. Sentence of death was passed, pending Her Majesty's pleasure, and the Court then adjourned to the next day, the 5th March, when the marine artilleryman stood his trial. According to the prosecution, it was alleged the prisoner was wearing a red jacket when he committed the crime, whereas the prisoner proved that on the day in question he wore a blue jacket. He was acquitted. The Governor then briefly addressed the Jury and thus closed the first session of a Court ever held in China for trial by Jury.

**True bills for murder.**

**Public opinion of the Criminal Court.**

The holding of a Criminal Court in Hongkong, though in itself a novelty, and giving some satisfaction to the inhabitants as a Court of superior jurisdiction in criminal matters with power to inflict punishments, more adequate than heretofore for the gravity of the offences committed, nevertheless caused disappointment as it was hoped that by the time or before the Criminal Court would be opened, the long expected and anxiously looked for Judge under the Charter would have arrived and thus put an end to a state of things which was deemed, even at this early stage of the Colony, intolerable. The Court, presided over by Sir Henry Pottinger, was said to have been a

**Dissatisfaction at non-opening of Supreme Court under the Charter.**

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* "The denial of counsel to a prisoner in a criminal matter is seen in the 47th of the laws attributed to Henry I. Sixty years ago this barbarous rule was still law in cases of felony, being abolished by the 6 and 7 Will. IV., c. 114." *Note to* 'Kyshe's Law relating to the Attorney-General and Solicitor-General of England,' p. 69.

complete failure. Sentence of death had been passed upon the Manila seaman who neither understood the proceedings of the Court, presumably through there being no interpreter present, nor had had the benefit of counsel. The Court, moreover, had been held for the trial of British subjects and the prisoner was a *Spanish* subject from Manila. The justice of the sentence was not impugned, but it was felt that if the prisoner had had the advice and assistance of a lawyer, the indictment as drawn up would have been thrown out, and the prisoner walked away from the bar a free man. As it was, the sentence was afterwards respited. As far back as the 26th June, 1843, the Charter had been published, and yet the Supreme Court had not been opened. As was pointed out, the extraordinary powers vested in the Governor might have been unavoidable at a certain period, and have been exercised in a spirit of moderation and equity; but now, however, there appeared no good reason why "military laws" should still be enforced, and the arrival of the Judge was therefore looked forward to with more than ordinary anxiety.

Sir Henry Pottinger, it was thought, would give a just decision so far as equity was concerned, nor was there any reason to doubt the correctness of the opinions he might receive on points of law from his legal adviser. Whatever degree of confidence he might have in his own judgment, he was at any rate placed in a delicate and unenviable position. Indeed, in his address to the Grand Jury at the opening of the Criminal Court, as will be remembered, Sir Henry Pottinger himself had deplored the absence of a competent Judge, and "*had wished to God that his share of the investigations on which they were about to enter had fallen into more qualified hands*," so that the discontent at the state of affairs then existing was not altogether uncalled for, especially when civil cases, frequently involving points of law, were left entirely to the judgment of the Chief Magistrate, rightly styled a "military magistrate." It was stated that rather than submit to a decision which was only legal by chance, the majority of the inhabitants had preferred foregoing their claims than incur "the *certain* expense and *uncertain* justice of the decision of a Judge who was totally unacquainted with law." There was no confidence in the decision of the Chief Magistrate on questions involving points of law. His incapacity was notorious, and there was no redress "as justice, or rather judgment, was only obtainable from this tribunal." There was no cause of dissatisfaction with Major Caine himself or with the gentleman who held the position of Marine Magistrate—Lieutenant Pedder, R.N.,—but it was the system which had been allowed to go on without any improvement that was objected to: "they mete out justice," it was remarked, "ac-

**Dissatisfaction at civil cases being determined by the Chief Magistrate.**

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cording to the judgment which God had been pleased to grant them; equitably, in their own opinion, no doubt: they are far above any intentional mal-administration of their respective offices— this much for equity in this Colony—law, there is none." No wonder, then, that indignation had got to be so universal, and that there was a general wish that the Supreme Court, with its complement of competent officials, should soon be opened.

**Sir H. Pottinger endeavours to appease public mind. Ordinance No. 6 of 1844.**

With a view to appeasing the public mind, as far as he could, Sir Henry Pottinger, on the 20th March, 1844, passed "Ordinance No. 6 of 1844, which enabled him to refer all civil actions or suits to arbitration, but which Ordinance was to cease to be in operation "on the arrival of and assumption of duties by the Judge of the Supreme Court." Laudable in its object, as this enactment was, it was subsequently disallowed by Her Majesty's Government, doubtless because the Judge had already been appointed and by the time the approval or disapproval of the Ordinance would be received by the local authorities, for aught was known, the Judge might be *functus officio*.

**Complaints as to Executive and Legislative Councils.**

Complaints of the irresponsibility of the Executive, the impracticability of the redress of grievance, and the utter inapplicability of the Legislative Council to the exigencies of the Colony were now frequent. The Council consisted only of the Governor, the General, and the Chief Magistrate, three military men, and with it thus constituted, eight Ordinances had already been passed. Some of these had met with disapproval, and Sir Henry Pottinger was urged to defer the passing of any more until the arrival of the Attorney-General and of the Judge, now shortly expected.

**Crime and Police inefficiency.**

The incursion of thieves and the frequent daring robberies, many going undetected and unpunished, by armed gangs, continued to cause alarm, especially among those of the community who lived in unprotected localities. It was urged that the attention of the Legislative Council should be speedily directed to the formation of an efficient police force for the protection of property and the lives of the inhabitants. It had long been a source of complaint that the Chief Magistrate had not had an effective force at his disposal, though he had frequently represented this to the authorities. He spared no personal exertions in the execution of his arduous duties; at all hours of the night he was reported to be unremitting in endeavouring to apprehend the thieves who infested the island. It was suggested, and not unreasonably so, that the police should be placed under the control of an officer who would have no other duties to perform.

**The Chief Magistrate as Head of the Police and Prisons.**

The Chief Magistrate had enough work on his hands during the day in his judicial capacity without adding that of a watchman at night to his labours, as he had recently been doing. Many of the thieves were believed to come from the opposite shore of Kowloon, and it was suggested that the military and the authorities

might be asked to afford some protection to the inhabitants. It was not desired to exaggerate the dangerous condition of affairs, the picture only required the trials of truth to rivet attention, but it was a matter of fact that the Colony had not received that protection from Her Majesty's forces which it had a right to demand. Half of the troops on the island, it was said, could well be drafted into the Police Force ; and half-a-dozen boats stationed at well known spots would render it almost an impossibility for the thieves to cross unobserved. The opportunities for plunder, and almost certainty of escaping undetected, or, if caught, the mildness of British justice compared with that of China, were said to be the causes for such hordes finding their way to Hongkong. The island was now, it was believed, an asylum for the very dregs of the Chinese population. Matters had become so serious that it was deemed advisable, as a first step, at once to relieve the Chief Magistrate of his immediate police duties and to place an officer in charge of the police. This was forthwith done by the appointment of Captain Haly, of the 41st Madras Native Infantry, with the sanction of Major-General D'Aguilar, as Superintendent of Police, on the 22nd February, 1844, he being sworn in as a Justice of the Peace for "the Colony of Hongkong and its dependencies and the Dominions of the Emperor of China" on the same day. This was the first appointment of the kind since the foundation of the Colony, the Chief Magistrate, Major Caine, having been, up to this time, Chief of the Police and of the Prisons, in addition to his other multifarious duties, though Mr. Hillier, the Assistant Magistrate, had afforded him much assistance. Captain Haly's services, however, being required with his regiment, he was a few days after, on the 1st March, succeeded by Captain Bruce of the 18th Royal Irish Regiment. During the few days Captain Haly had been connected with the Force, he effected many necessary improvements, and it was with regret that the public heard of his departure, his regiment leaving for India.

**Capt. Haly, First Superintendent of Police.**

**Capt. Bruce succeeds Capt. Haly.**

On the 2nd March, 1844, consequent upon the "number of outlaws that had from time to time come from the mainland and adjacent islands to this harbour purposely to rob and steal, with a view to preventing similar outrages in future and in order to repress the lawless practices of vagabonds," the Governor passed certain rules for the regulation of boats and junks, which were published both in English and in Chinese, stating that the law would be carried into full effect with the utmost rigour. The immediate result of this was that many boatmen left for Whampoa and other adjacent places, but, as was rightly observed, the inconvenience would not be long felt as respectable men would soon be found in large numbers for the wages paid in Hongkong.

**Regulation of boats and junks.**

Chap. I.

1844.

Suspicious character of native watchmen. Notice to house-holders.

As a measure of police precaution, in consequence of native watchmen in private employ being suspected of being in league with robbers, the following notice issued by the Chief Magistrate was circulated among the European inhabitants :—

NOTICE.

Chief Magistrate's Office, Victoria,
Hongkong, 9th March, 1844.

Householders and all persons having hired watchmen for protecting their houses are hereby informed that the Reverend Charles Gutzlaff, Assistant to the Chief Magistrate in the Chinese Department, has volunteered to make inquiry into the character of all the watchmen in the island, many being suspected of having leagued with robbers. It is therefore proposed that Mr. Charles Gutzlaff should give to the watchmen (who may be sent to him for inquiry) certificates in all cases where he is satisfied with the parties examined, but no certificate will be given to watchmen regarding whose conduct Mr. Gutzlaff may have doubts, and these precautionary measures, it is hoped, will enable Householders (should they please so to do) to discharge watchmen who are not able to give a sufficient security for their good conduct. It is clearly to be understood that Mr. Gutzlaff is by no means responsible, and that it is perfectly optional with parties to profit by this offer.

(Signed) W. CAINE,
*Chief Magistrate.*

Mr. Gutzlaff will devote two hours per day to the proposed measure from 10 to 12 a.m., commencing on Friday next, the 15th instant, until the examination is concluded.

Precursor of registration of Chinese inhabitants.

This, no doubt, was meant as the precursor of a system of registration to be gradually introduced, for by a notification published on the 22nd April, 1844, it was announced "that the registry of the native Chinese population, whether permanently or temporarily resident in this part of the island (Victoria), having with certain exceptions being completed, it was now considered expedient "with a view to establishing in future a perfect system of surveillance as well as to introducing the Chinese plan of a municipal police with native constables and sub-constables mutually bound for themselves under their supervision, to extend the registry to all Chinese not hitherto included." This measure was favourably received especially having regard to the object in view, and the wisdom of it was shown that with it, and owing to greater vigilance shown by the anxiety of the Governor equalled by the readiness with which his wishes and suggestions were received and executed by the military commander, Major-General D'Aguilar, who had consented to the Police Force being augmented by volunteers from the 58th Regiment, and to whom the residents were grateful for the measures he had taken to avert the nightly irruption of banditti in Hongkong, daring robberies had considerably decreased, and

Maj.-Gen. D'Aguilar and military volunteers as an addition to Police Force.

it was hoped that the system of registration would now be extended to the whole island. Chap. I. 1844.

On the 11th March, 1844, it was announced that henceforth all offenders under sentence of transportation would be sent to Van Diemen's Land and Norfolk Island, and the islands adjacent to and comprised within the Government of Van Diemen's Land (Western Australia). This was under the powers conferred by an Order of the Queen-in-Council, dated 22nd May, 1840, under the Act 6 Geo. IV., c. 69, relative to transportation. This proclamation was repeated by Governor Davis on the 22nd June, 1844, but rescinded by proclamation of the 26th February, 1845, in consequence of instructions from the Home Government that no provision had been made in the above Colony for the reception of convicts. The appointment of Mr. Paul Ivy Sterling, Barrister-at-Law, as Her Majesty's Attorney-General for Hongkong, was currently reported in the Colony, in April, 1844, but nothing had yet been heard about the Chief Justiceship except that the post had been fixed at £2,500* per annum, the London *Observer* remarking that it had been offered to no less than seven barristers and successively refused by all; fear of the climate, it was said, being the reason. By an Order of the Queen-in-Council, dated the 17th April, 1844, this Colony was appointed as the place wherein crimes and offences committed by British subjects in China were to be tried, and the Chief Justice was empowered to proceed thither similarly to try offences. This Order was re-published in the Colony in May, 1847.

Transportation.

Queen's Order in Council of 22nd May, 1840. Act 6 Geo. IV., c. 69.

Mr. P. I. Sterling, First Attorney-General of Hongkong. The Chief Justiceship.

Queen's Order in Council of 17th April, 1844. Hongkong a place of trial for British offenders in China.

Much hostile comment on a supplementary treaty with China entered into by Sir Henry Pottinger, Her Majesty's Plenipotentiary, on the 8th October, 1843, but only published locally after ratification, now excited public attention. It was said locally that the Governor had "signed and sealed a compact sacrificing the shipping interest of the country and injuring the Colony; that as a soldier and a diplomatist he had served his country faithfully, but that this convention gave undoubted evidence of his total ignorance of international commercial negotiations." The objectionable points would appear to have been the 13th and 17th articles. The 13th provided that Chinese purchasing goods in Hongkong were to ship them solely in Chinese vessels, and the 17th provided that foreign vessels engaged in the coasting trade were to pay the same charges at each port as those that made the long voyage from Europe, thus compelling a vessel, loading here for the ports to the northward, to pay charges four

Supplementary Treaty with China. Hostile comments.

* Afterwards increased to £3,000 on condition the holder should have no claim to pension; but as to this see Chap. xxvii. and xxxi., *infrà*.

Chap. I. 1844.

times in the course of from a month to six weeks, and thereby raising the rate of freight to the great injury of the direct trade between this Colony and the four new ports. The injurious effect of the two articles was alleged to have made itself already felt in Hongkong, and it was said, moreover, that the 17th article was injurious not only to the shipping interests of all the Powers, but principally to our own as forming the great bulk of the tonnage employed in the coasting trade. Criticisms upon the subject soon appeared in the London papers, and the French press, notably the *Journal des Débats*, gave garbled accounts of the discrepancies between different translations of the treaty, pointing out at the same time that the translators had been bribed, and Sir Henry Pottinger made the victim of an unworthy trickery—*supercherie*. Sir Henry Pottinger afterwards, at a dinner given him by the merchants of London on the 11th December, 1844, at Merchant Taylors' Hall, took occasion to refer to this treaty and endeavoured to vindicate himself from the charge of having published an incorrect translation of it. He said :—

Home and French criticisms.

Sir Henry Pottinger vindicates himself.

"A very erroneous impression went abroad, through, I believe, some papers at Canton, that there had been some mistake committed in the treaty. This is quite incorrect. It arose from the necessity of my making public an abstract of the treaty, while the Chinese published the whole, and a translation was made with many important omissions. Having been asked seriously whether there was any ground for the allegation that mistakes had been committed, I am happy to say that there is no cause whatever for the alarm."

It was, however, understood that no mistakes were actually made in the treaty itself, that the Chinese copy was correct, and the errors made in a first translation admitted, though, by a very curious coincidence, the two clauses omitted in that translation were precisely those that were objected to. One of the clauses, the 17th, that which imposed heavy tonnage dues on coasting vessels, had been removed by treaty with the United States. The other, it was said, "still hung like a mill-stone round the neck of the Colony." *The London Chronicle*, speaking on this subject afterwards, said :—

*The London Chronicle.*

"It was the French papers which spread the report that the Chinese treaty was by no means as favourable as was supposed, for that the original contained certain unfavourable stipulations which were not to be found in the English copy. Sir Henry contradicts this, but unfortunately in a way that must induce the French to persevere in their opinion. A fuller explanation than that given in Sir Henry's speech would be highly desirable."

Registration of Chinese. Public opinion.

In regard to the registration system sought to be introduced and hereinbefore noticed, on the 24th April, 1844, there appeared a notification to the effect that the "registration of the Chinese inhabitants had been completed" with the exception of those in the employ of Europeans, who were now requested to take them to the office of Mr. Gutzlaff, the Chinese Secretary,

to be registered. This was regarded as an impudent attempt to deceive the people, for to have completed the "registration of the Chinese inhabitants" in so short a time was to make one believe a most arduous task had been performed, and that every man was known to the Chinese Secretary and that *he* could guarantee their respectability. The whole thing was considered a farce, and probably not unnaturally so, under the circumstances. It was said that to render such a task complete, time, talents, and perseverance were all required, and without them any plan would prove unavailing, and the assertion that this work had been performed in so short a period by a gentleman who had other duties, both secular and clerical, to attend to, was scouted as preposterous. As will be seen, the subject still continued to engage the attention of the authorities whose praiseworthy efforts in this direction were all towards the abating of crime, by the passing of Ordinance No. 16 of 1844, for establishing a registry of the inhabitants, of which more anon.

Ordinance No. 16 of 1844.

Retirement of Sir Henry Pottinger. Approval of his services by Her Majesty's Government.

Mr. J. F. Davis succeeds Sir H. Pottinger.

It was now known that Sir Henry Pottinger would be soon relinquishing his duties as Governor and Her Majesty's Plenipotentiary in China. He had been continuously on active service since his first arrival in the Colony in August, 1841, and had expressed a wish to be relieved of his duties, and which could not, considering his services, be reasonably refused him. Rumour spoke of the appointment of Mr. John Francis Davis, of the East India Company's service and formerly one of the Superintendents of British Trade in India, as his successor. As the records afterwards show, the report proved correct, and also the report that Sir Henry Pottinger would be leaving Hongkong before very long. On announcing the appointment of his successor in February, 1844, under the signature of the Foreign and Colonial Secretaries of Her Majesty's Government, the Earl of Aberdeen and Lord Stanley, the Queen was pleased to convey to Sir Henry Pottinger Her Majesty's most gracious approval of his whole conduct during his employment in Her Majesty's service; the regret the Queen felt that he should have been under the necessity of relinquishing the trust which he had discharged with so much zeal and ability; and the announcement to Sir Henry of Her Majesty's commands, to assure him that he retired from Her service in possession of Her Majesty's entire approbation and gracious acceptance of his services. This was coupled with the declaration that Her Majesty's Government felt that the energy and judgment he had exhibited in the negotiations by which hostilities were brought to an end, and in those which were afterwards required for consolidating the work of peace which had been so happily accomplished and for placing the relations between the two countries on a sound footing, justly

Chap. I. 1844.

entitled him to the highest commendation ; and that the duties which he had been called upon to discharge during his residence in China had been various and complicated, and his zeal and resources had overcome all difficulties.

The entire and unqualified approbation by Her Majesty and her confidential advisers of all Sir Henry's acts as British Plenipotentiary in China must have been as gratifying to himself and his friends as it was destructive of every past or future endeavour to give a false colouring to the estimation in which his services were held by those most competent to judge of their merits and most interested in their success. The reception he afterwards met with on his arrival in England, as hereinafter shown, moreover fully testified to the estimation in which he was held and the value set upon the services he had rendered to his own country and the world at large.

# CHAPTER II.

## 1844.

Arrival of Governor Davis and Chief Justice Hulme.—The Hon. F. W. A. Bruce, Colonial Secretary.—Mr. R. D. Cay, Registrar.—Major Caine.—Lieut. Pedder, R.N.—Previous career of Mr. Davis.—Previous career of Chief Justice Hulme.—Local opinion of existing Courts.—Commissions of Governor Davis.—Establishment of a magistracy at Chuck-chu, with Mr. Hillier as Assistant Magistrate.—Chief Justice Hulme appointed a member of the Legislative Council.—Departure of Sir H. Pottinger.—Mr. Burgass accompanies Sir H. Pottinger.—Delay in departure of Sir H. Pottinger, owing to misunderstanding with Admiral Cochrane.—Arrival home of Admiral Parker.—Sir H. Pottinger's career in China.—His difficulties in first settling Hongkong.—His legislation.—His arrival in England.—Honours bestowed on him.—His return to Ireland.—Character of England raised by Sir H. Pottinger.—England's policy in China.—Universal commerce.—Magnanimity of England unparalleled in the annals of nations.—Desecration of day of rest in Hongkong.—Order of Governor-in-Council as to Sunday observance.—Governor's Circular to European firms regarding night Police.—Lighting of the town. The residents consulted.—Indian night Police raised.—No mutual sympathy between the Indian and the Chinaman.—Table of fees in Police Magistrate's office.—Crime and lighting of the town. Ordinance No. 5 of 1844.—Mr. H. C. Sirr.—Mr. B. Robertson.—Mr. R. B. Jackson.—Piracy.—Arrival of Mr. Sterling, the Attorney-General.—State of judicial affairs at this period.—Mr. Sterling gazetted a member of the Executive Council.—Tenders for buildings at Chuck-chu and for Police Stations.—Chinese watchmen and bamboo-striking.—Chinese custom of bamboo-striking.—Fine imposed by Chief Magistrate for contravening the order against bamboo-striking.—Bewailings of Hongkong people in consequence of stoppage of bamboo-striking.—Ordinance No. 5 of 1844, section 1.—Major-General D'Aguilar instrumental in stopping bamboo-striking.—Ordinance No. 17 of 1844.—Governor Davis inspects northern ports. Major-General D'Aguilar administers Government *pro tem.*—Renewed complaints at non-opening of the Supreme Court.—Chief Justice Hulme abused in consequence.—Skit upon state of affairs.—Result of scandalous delay in opening Supreme Court. —Ordinance No. 6 of 1844.—Ordinance No. 15 of 1844.—Ordinance No. 6 of 1845.—Ordinance No. 2 of 1846.

Chap. II.

Arrival of Governor Davis and Chief Justice Hulme.

At length, on the 7th May, 1844, H.M.S. *Spiteful* arrived from Bombay, having on board a large number of the long expected and anxiously looked for important officials for the Government of Hongkong, among these being His Excellency John Francis Davis previously mentioned, Governor and Her Majesty's Plenipotentiary and Chief Superintendent of Trade in China, in succession to Sir Henry Pottinger, whose intended retirement and early return Home had long formed the subject of speculation, the Honourable Frederick W. A. Bruce, Colonial Secretary,* the Honourable John Walter Hulme, Esquire, Chief Justice, and Mr. Robert Dundas Cay, Registrar of the Supreme Court. Early in the morning, the next day, Wednesday, the 8th, Mr. Davis landed, being received with the honours due to his rank. On the same day he was sworn into office by the Legislative Council, and a notification duly appeared giving the appointments beforementioned, and announcing that

The Hon. F. W. A. Bruce, Colonial Secretary.

Mr. R. D. Cay, Registrar.

* He was also a barrister, and a brother of the Earl of Elgin, Governor-General of Canada.

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1844.

Major Caine. Lieut. Pedder, R.N.

Brevet-Major Wm. Caine, heretofore known as Chief Magistrate, had been appointed as "Police Magistrate, Sheriff, and Provost-Marshal," and Lieutenant Wm. Pedder, R.N., heretofore Harbour-Master and Marine Magistrate, as "Harbour-Master."

Previous career of Mr. Davis.

Mr. Davis, the Governor, had previously held the office of Superintendent of Trade in China—some ten years before—twenty years previous to which he had accompanied Lord Amherst on his embassy to Pekin. During the interval between his present appointment and his departure from China he had held several important appointments under the East India Company. Mr. Davis was also known as the accomplished author of perhaps the only really good work that had been written on China, and from his intimate knowledge of the character of the Chinese, their language, manners, and customs, as well as from his experience of commercial affairs, particularly those of the East, he was considered eminently qualified for the office to which he had been appointed, and the selection was accordingly popular.

Previous career of Chief Justice Hulme. Local opinion of existing Courts.

With regard to the Chief Justice, Mr. Hulme, his appointment to preside over the judiciary of Hongkong resulted from his well-earned reputation of being a sound lawyer.* Rumour had it that now that the Chief Justice and the Registrar had arrived, upon the arrival of the Attorney-General, not long due, the Supreme Court would open and with it end "the old-fashioned military Court, which had given so much dissatisfaction. The jurisdiction of this Court, which so strongly called to remembrance the feudal days of old, would in future be confined to police cases and, as a police establishment, would prove a most efficient one." These were rather ungenerous remarks, it must be admitted, to pass on the energetic man, who had so long presided over this Court, and the Government of the day that had deserved so much credit and done the best it could, with the exceptionally limited resources of every kind at its disposal.

Commissions of Governor Davis.

The four Commissions of Mr. Davis, the first giving him full powers under the Great Seal, and as Her Majesty's Plenipotentiary, Chief Superintendent of the Trade of British Subjects in China, and Governor and Commander-in-Chief of Hongkong and its dependencies, the latter being by writ of Privy Seal, were duly published shortly after his arrival on the 10th May, 1844. These were all dated the 9th January, 1844, the date of his appointment.

Establishment of a magistracy

The number of daring robberies and other serious crimes committed at Chuck-chu (called Stanley in March, 1845), and

* Mr. John Walter Hulme, of the Middle Temple, was an associate of the celebrated Joseph Chitty (whose daughter he married); was the joint author with Mr. Chitty of an important work entitled "*A Practical Treatise on Bills of Exchange*" which ran into several editions, the last edition appearing in 1840; and was also joint author with Mr. Chitty of "*A Collection of Statutes of Practical Utility*," with notes thereon, intended as a Circuit and Court Companion—*see* "*Jurist*" (1837) pp. 808, 872.

its vicinity, the resort of the criminal classes, induced the Government to establish a magistracy there in May, 1844, Mr. Hillier, the Assistant Magistrate, who in February last had been gazetted as Recording Officer to the Criminal and Admiralty Court, receiving the appointment. From his past experience he was considered as well qualified for the position as any one procurable in the Colony, and his past services had entitled him to the consideration of the Government. The comparative degree of safety enjoyed at this time in the island was said, in a great measure, to be due to the able assistance he had rendered the Chief Magistrate, with whom, it will be remembered, the military so energetically co-operated in putting down crime.

**at Chuckchu, with Mr. Hillier as Assistant Magistrate.**

In June, 1844, the records show the appointment of the Chief Justice, Mr. J. W. Hulme, as a member of the Legislative Council.

**Chief Justice Hulme appointed a member of the Legislative Council.**

Sir Henry Pottinger, the late Governor, embarked on board H.M.S. *Driver*, at midnight, on Tuesday, the 18th June, 1844, for India, *en route* to England. During the interval between the arrival of his successor, Mr. Davis, on the 7th May, until his departure, Sir Henry Pottinger had been constantly engaged with the new Governor in settling important matters connected with the Government. Amongst those who accompanied him was the barrister, Mr. Burgass, formerly Clerk of the Legislative Council and Legal Adviser to the Government. Owing to some misunderstanding between Sir Henry Pottinger and Rear-Admiral Sir Thomas Cochrane, who had succeeded Rear-Admiral Sir Wm. Parker, as Commander of the Naval Forces, in China, the *Driver* did not sail till late on Thursday evening. It would appear that the Admiral had granted a passage in the gun-room to a Spanish officer from Manila, who was the bearer of despatches to the Court of Madrid. Sir Henry Pottinger was not aware of the circumstance until after his embarkation, when he insisted upon the Admiral turning the Spanish gentleman out of the ship, to which the Admiral would not consent. After two days unsatisfactory negotiations, and the exchange of numerous letters, the facts coming to the knowledge of the foreign officer, he very properly withdrew from the vessel, and she then immediately, on the 20th, proceeded to Macao, *en route* to India. The gallant Admiral, Sir Wm. Parker, Bart., G.C.B., the late Commander of the Naval Forces, had at this time reached Home where a grand entertainment was given him by the Royal Naval Club. Not long after he was awarded a pension for meritorious services and received the appointment of Naval Commander in the Mediterranean *vice* Sir E. Owen, and hoisted his flag on board the *Monarch*, 84.

**Departure of Sir H. Pottinger.**

**Mr. Burgass accompanies Sir H. Pottinger.**

**Delay in departure of Sir H. Pottinger, owing to misunderstanding with Admiral Cochrane.**

**Arrival Home of Admiral Parker.**

Chap. II.

1844.

Sir H. Pottinger's career in China.

In regard to Sir Henry Pottinger's career in China, it is impossible not to do justice to the great ability exhibited by him at a most difficult and important crisis, and to the great moderation he displayed in the hour of victory. His extraordinary zeal and industry in the establishment of the Colony, and the settlement of our commercial relations with the Chinese, will ever redound to his credit. With regard to Hongkong itself, he had to contend with endless difficulties. He had not only to establish the Colony without being supplied with the usual model guide in the shape of printed instructions from the Colonial Office containing orders clearly defined as to almost every particular matter which would be required of him, but he was at a disadvantage in many other respects, and his establishment was formed of such rough material as first came to hand. It was morally impossible, with such assistance, that he could carry on the Government satisfactorily; the defective judicatory and totally inefficient police were the cause of unceasing complaints, and added to these was the want of a properly-constituted Legislative Council with whom he could consult. Nominally he had the latter, but the best element was wanting, namely, members of the community, outside his own officials, whose advice he might have sought in important and pressing local matters. He was accused of passing hasty, unconsidered measures, some of which had been disallowed or had never come into operation. From the time the Council opened on the 11th January, 1844, till the cessation of his governorship in May of the same year, he had passed no less than *twelve* Ordinances, all of which, however, be it said, with an important local bearing. An Indian paper, remarking upon that fact, said that the gallant plenipotentiary was a legislative incarnation of the "go ahead" principle of our transatlantic brethren; he coined laws almost as readily as the mints did rupees ..... Her Majesty's Governor of Hongkong should be known hereafter as "Sir Henry Notification." But surely all this merely showed the public spirit with which he was imbued and the interest he took in the Colony and its people, all of which evidently he had at heart. After a short stay in India, which he had reached on the 31st July, 1844, and where he was publicly entertained, the Bombay Chamber of Commerce presenting him with an address on the 21st August, 1844, Sir Henry Pottinger left Bombay for England, viâ Egypt, in the afternoon of the 27th August, 1844, embarking under the salutes to which his high rank entitled him. His merits, on arrival in England, were not overlooked. It is not often that persons in a civilian capacity are able to achieve any of those great enterprises which command the gratitude and admiration of mankind, and it must have been especially gratifying to him

His difficulties in first settling Hongkong.

His legislation.

His arrival in England.

personally to find how much the ability he had displayed in his negotiations with China, was appreciated by his countrymen. He was made a member of the Privy Council, awarded a pension of £1,500 a year, and elected a member of some of the city corporations. On the 11th December, 1844, Sir Henry Pottinger was entertained at Merchant Taylors' Hall by the merchants of London, Mr. J. A. Smith, M.P., officiating as chairman. Immediately on the latter's right hand sat the guest, Sir Henry Pottinger, the Marquis of Normanby, and Lord Palmerston, and on the left the Earl of Aberdeen and Sir James Graham. Before the dinner, Sir G. Larpent, on behalf of the merchants of London trading to the East Indies and China, presented an address to Sir Henry, eulogizing his skill and ability in the conduct of the negotiations. On the 17th December, Sir Henry Pottinger was similarly entertained at Liverpool by the leading merchants there, amongst those present being the Mayor, Lord Sandon, Mr. Wilson Patten, M.P., Lord Stanley, the High-Sheriff Mr. W. Entwistle, M.P., and others, Sir Henry being presented before dinner with an address from the East India and China Association of Liverpool. On the 20th December, he was again entertained at a sumptuous festival, at Manchester, presentations of plate being made to him by Manchester merchants and other bodies.* He was also presented with the freedom of the cities of Edinburgh and Glasgow, the latter city giving him a dinner also, and he was requested to stand as a candidate for the representation of the town of Greenock in Parliament, an honour which he declined. His return to his native city, Belfast, was celebrated by a public entertainment by the gentry of the neighbouring counties, the mayor and corporation and the leading members of the community being present. Upon this, as upon all similar occasions, the public services of the distinguished guest were the theme of unmixed praise, so that in fact the proceedings were little more than a repetition of what had already taken place at the receptions given him in London, Liverpool, and elsewhere. All parties were agreed as to the national importance of what Sir Henry Pottinger had achieved by determining our relations with China, and opening to our trade the markets and resources of another empire. He had

Honours bestowed on him.

His return to Ireland.

Character of England raised by Sir H. Pottinger.

* At a meeting of the Common Council of the City of London, held on the 12th February, 1845, it was proposed by Mr. R. L. Jones, and seconded by Mr. J. Dixon, and carried unanimously, that the freedom of the city, in a box of the value of 100 guineas be presented to Major-General Sir H. Pottinger, Bart., G.C.B., "in testimony of the estimation entertained by this Court, in common with their fellow-citizens, in regard to his important services in negotiating a treaty of peace and commerce with the Chinese empire." Sir H. Pottinger intimated to the Committee at Liverpool that he had already two complete services of plate, in addition to that to be presented to him by the merchants of Bombay; and that it would be most gratifying to his feelings if the amount subscribed in Manchester, together with that subscribed for a testimonial in Liverpool, should be expended in the purchase of a residence in London. This was at once acquiesced in by the Committee, with the understanding that a sum should be applied for the purchase of a single piece of plate, on which should be engraved a suitable commemorative inscription.

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raised the character of England by the liberal views which had prompted him, upon his own responsibility, to conclude a commercial treaty admitting other civilized nations to an equal footing in trading with that vast and wonderful empire, and had showed that England had no ulterior views of her own, no sordid schemes of violent usurpation, no mean desire of expelling other nations from the equal benefits of universal commerce throughout the world, as indeed has ever been her policy. She did not fight for herself alone, but with a magnanimity almost, if not quite, unparalleled in the annals of nations, she consecrated the first fruits of her conquest as an offering to the whole civilized world of the advantage which she alone had won.*

**England's policy in China. Universal commerce.**

**Magnanimity of England unparalleled in the annals of nations.**

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* The following is a condensed record of the life and services of Sir Henry Pottinger as derived from the papers of the time :—

"Sir Henry Pottinger was the fifth son of Eldred Curwen Pottinger, Esquire, of Mount Pottinger, in the county of Down. He was born in 1791, and left for India, when he was thirteen years of age, in 1804. His services in different parts of the East have spread over forty years. In his thirtieth year he married a daughter of Richard Cooke, Esquire, of an Irish family located at Cookesborough, in the county of Westmeath. Having been appointed an Ensign in the 7th Regiment Bombay N.I. in 1806, he immediately devoted his attention to the study of the native languages, and was appointed Assistant to the Superintendent, on the departure of the officer who filled that office to Europe, holding the same till the abolition of the Cadet Establishment. In 1809, Lieut. Pottinger was employed as an assistant with a mission from the Supreme Government to the Rulers in Scinde, and, on his return from that country, was selected, with Captain Christie of the Bombay Army, by the late Sir John Malcolm (then Colonel Malcolm) to explore the totally unknown country lying between India and Persia. The travellers landed at Sonmeeanee on the 16th January, 1810, and proceeded by Beila and Khosdar to Khelat, and thence to Noshky where they separated about the 20th of March ..... Lieut. Pottinger proceeded by Sarawan, the provinces of Kohistan, Nurmansheer, and Kirman to Shiraz, which he reached on the 5th June, having performed a journey of nearly 1,600 miles since leaving Sonmeeanee of which nearly 1,400 miles were in as direct a line as the paths would admit from east to west, and been for two months and a half without any European companion whatever.....Lieut. Pottinger's mission was to pave the way for meeting Napoleon, should his gigantic schemes ever lead the French power in that direction. Amidst quick-witted and observant people, he passed from the north-west of India to the ancient capital of Persia in the garb and by the calling of a Mahomedan horse-dealer—at every hour his life in peril.....From Lieut. Pottinger's return from Persia to Bombay, where he landed in the early part of 1811, till the year 1814, he was employed in the duties of military life, but in the latter year he was appointed by the Earl of Moira (afterwards Marquis of Hastings) then Governor-General of India, second assistant to the Resident at Poona (the Honourable Mountstuart Elphinstone), an office which he continued to fill until the termination of the Mahratta War of 1817-18, when he was appointed Collector of Ahmednuggur, and there remained for about seven years. In 1825, a vacancy occurred in the appointment of Resident in Kutch, and Sir Henry, then Major, Pottinger, being desirous of returning to the political line of the service, was nominated to it by Mr. Elphinstone, who had succeeded some days before to the Government of the Presidency. To his duties as Resident were added those of the then Regency. Whilst in the exercise of that office, Major Pottinger reclaimed the Principality from the state of anarchy and confusion in which he found it, and placed it in one of unexampled tranquillity and prosperity. From 1825 to 1840, in addition to his duties as Resident in Kutch, Major, afterwards Colonel, Pottinger was the medium of constant communication between the Supreme and Bombay Governments and the Ameers of Scinde.....On the close of the operations in Afghanistan and the return of the Bombay troops to India, Sir Henry Pottinger, who had been raised to the dignity of a Baronet in 1839 for his services during the advance of the army through Scinde and his general management of our interests in that country, returned to Bombay and eventually to Europe, with impaired health, the consequence of seven and thirty years' uninterrupted residence and exertion in India. He had scarcely arrived in England when, in May, 1841, he was sent for by the President of the Board of Control, Sir John Hobhouse, and nominated to undertake the difficult duties pertaining to the desired settlement of our existing differences with the Chinese Government.....

Desecration of day of rest in Hongkong. Order of Governor-in-Council as to Sunday observance.

The desecration of the day of rest being practically the order of the day in Hongkong at this period, even in the Government Departments, notwithstanding the laws in force upon the subject, the Governor-in-Council directed that the following order should be published for general information, His Excellency adding that he expected that the course therein indicated by the Government would in future be followed, and the Sunday observed with due respect by the Christian population throughout the Colony:—

Government House,

Hongkong, 28th June, 1844.

Sir,

I am directed by His Excellency the Governor-in-Council to inform you, that, with a view to a better observance of Sunday throughout the Colony, he directs that Government works be not proceeded with on that day, and that all Europeans in the service of your department be thereby afforded an opportunity of attending Divine Service.

In all contracts made in future, you will take care that Sunday is omitted in calculating the time necessary for the completion of the work contracted for.

I have, etc., etc.,

FREDERICK W. A. BRUCE,
*Colonial Secretary.*

CHARLES ST. G. CLEVERLY, Esq.
*Acting Surveyor-General.*

That this order was followed more in the breach than in its observance may be gathered from a further proclamation to the same effect issued in February, 1845.

Governor's circular to European firms regarding night Police.

In consequence of a suggestion from the Police Magistrate, whose experience upon the subject was worthy of consideration, the Governor addressed a circular to the principal European firms in the Colony, requesting their advice and co-operation in establishing a night Police. This again, as before, showed the good-will and anxiety of the Government in doing its very utmost to stamp out crime from the island. As will be seen, the question of the lighting of the town, which

Lighting of the town. The residents consulted.

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the military portion of which concluded on the 17th August, 1843, on which day he desired Sir Hugh Gough and Sir William Parker to suspend hostilities. On the 29th August, the treaty was signed, and shortly after the supplementary treaty. In August, 1842, he received the Grand Cross of the Bath; and in April, 1843, was appointed Governor and Commander-in-Chief of the Colony of Hongkong. Sir Robert Peel, when announcing that the new Government had thus retained the nominee of the old, added a personal compliment, couched in the highest terms of eulogium; and at another time he expressed his regret that custom alone prevented Sir Henry from receiving for his civil services the thanks of Parliament, which others had received for perhaps less important military services ..... In September, 1846, Sir Henry Pottinger was appointed Governor of the Cape of Good Hope, and in 1847 to the Governorship of Madras until 1854 when he returned to England. He died at Malta on the 18th March, 1856, in the 65th year of his age.

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still remained unlit at night, and the possibility of doing away with private watchmen in whom the authorities had all along the reverse of confidence, were touched upon. The unsuitability of the British for street police, owing to exposure, is deserving of attention even at this date. The following is a copy of the Circular in question:—

Government House,
Victoria, Hongkong, 3rd July, 1844.

Gentlemen,

The Police Magistrate has proposed that a street Police should be formed for the purpose of keeping watch at night, to be supported at intervals by stations, from which assistance could be had in the event of robbers descending in too great force, for the constables on the look-out to cope with. It seems to His Excellency that if this is properly organized, and the lighting of the town properly enforced, it would do away, to a great extent, with the necessity of employing private watchmen—a system entailing considerable expense—insufficient for the protection of those who adopt it, as has been proved on numerous occasions, and very defective as a means of even giving alarm, from the want of any organization or mutual co-operation among the watchmen themselves.

As the time is approaching when the expense of these local charges must be provided for on the spot, His Excellency, before coming to any final decision on the subject, is anxious to have the benefit of any suggestion which your experience may enable you to offer on the most effectual and economical means of rendering secure the persons and property of residents in this town, either by carrying out the system as above proposed, or by such other means as you may think best, and he directs me particularly to draw your attention to these points:

How far ought such a Police to extend?

What points would be best adapted for the supporting stations?

What class of men would do for the street Police, as the exposure is found to be very fatal to the British? and by what means, assessment or otherwise, you would propose to meet the expenses of the force.

I have etc., etc.,

(Signed) FREDERICK W. A. BRUCE,
*Colonial Secretary.*

**Indian night Police raised.**

The Government, in taking the opinion of the inhabitants upon such an important matter no doubt acted both wisely and liberally—wisely, because as a subject that so closely affected their welfare, he would be enabled to act with greater confidence and energy, fortified with the advice of the most influential and experienced members of the community; liberally, inasmuch as the Colony would be taxed to support the establishment, and it was therefore proper that the inhabitants should have a voice in its formation, which, in the then state of the Colony, they could not have through the usual medium of elective members of Legislative Council. As a result of the *démarches* upon this subject, early in September, 1844, a corps

of twenty-five natives of India was raised, and placed under the control of a vigilant officer. These men, armed with pistols and cutlasses, were stationed at short distances along the Queen's Road, and from sunset to sunrise were on duty, affording great protection to property. The *matériel* of which this body was formed, as it is now, was probably the best that could have been chosen, as undoubtedly there exists no mutual sympathy between the Indian and the Chinaman,—the reverse probably,—which would thus render the risk of connivance at any time extremely improbable and therefore the security to the public greater.

No mutual sympathy between the Indian and the Chinaman.

On the 16th July, 1844, a table of fees to be taken in the Police Magistrate's office, having been approved by the Governor-in-Council, was published for general information. This, to some extent, superseded the obnoxious table published in January and before alluded to, and remained in force until superseded by the new table published on the 26th December, 1849.

Table of fees in Police Magistrate's office.

The Governor, being convinced that one of the most effectual means both of preventing and detecting crime consisted in having the streets well lighted, on the 18th July, called upon the inhabitants of the town to conform strictly in future to the provisions of Ordinance No. 5 of 1844, requiring all persons to affix a proper lamp or lantern to their houses and to keep it alight during the night, the police having strict orders to prosecute all offenders in that respect.

Crime and lighting of the town. Ordinance No. 5 of 1844.

Mr. Henry Charles Sirr, who had arrived in the Colony on the 29th May, together with Messrs. B. Robertson* and R. B. Jackson as vice-consuls for China, and all three Barristers-at-Law, now threw up his appointment and started practising in Hongkong. Here he remained, however, a short time, proceeding afterwards to Ceylon.†

Mr. H. C. Sirr. Mr. B. Robertson. Mr. R. B. Jackson.

The records at this time disclose several daring cases of piracy. Robberies in Hongkong proper being less frequent, owing to the vigilance of the authorities, the ruffians now seemed inclined to carry on their nefarious trade upon the neighbouring waters. The cause of this was put down to the mildness of our laws, with the result that the Chinaman had got a rather contemptible opinion of British criminal jurisprudence—"the mere scratching with a rattan, backs tanned to the thickness of a sole leather,

Piracy.

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* Called to the Bar, 16th June, 1840. Mr. Robertson held various important appointments in the Consular Service. He was in charge of the Superintendency at Hongkong in September, 1854, and in 1877 retired as Consul-General at Shanghai. He was made a C.B. in 1865 and knighted in 1872.

† From the records it would appear that Mr. Sirr afterwards met with a chequered career, especially in Ceylon, where he, for a time, held a Government appointment. He wrote a book upon "*China and the Chinese*," giving the result of his experience in these parts.

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will not intimidate the vicious, but the principles of suspension, as sometimes exhibited in front of Newgate, would probably be more efficacious in impressing upon the spectators the beauties of honesty,"—remarks passed locally and probably not too strong having regard to the people under consideration.

**Arrival of Mr. Sterling, the Attorney-General.**

Mr. Paul Ivy Sterling, the Attorney-General, whose appointment was rumoured in April last, arrived with his family in the *Surge*, from London, on the 28th July, 1844.* He held also the appointment of Legal Adviser to the Superintendency of Trade, his emoluments being £1,500 a year, with private practice.

**State of judicial affairs at this period.**

The Judicial Department was now fully constituted, and it was hoped that the Court would be opened with as little delay as possible. The Colony had been for some time in the unenviable position of having no Civil Court of Justice whatever. On the arrival of the Chief Justice in May, the Police Magistrate had ceased to decide upon actions of a civil nature, restricting his Court to its own legitimate duties, in consequence of which, as may be readily imagined, considerable inconvenience had been experienced. Shortly after his arrival, Mr. Sterling was gazetted a member of the Executive Council.

**Mr. Sterling gazetted a member of the Executive Council.**

**Tenders for buildings at Chuck-chu and for Police Stations.**

As a result of the activity shown by the authorities at this time in regard to the proper settlement of the island, it is not out of place to mention the calling of tenders on the 12th August, 1844, for the construction of a residence for the Assistant Magistrate, with police stations, at Chuck-chu, and of three police stations in the town itself.

**Chinese watchmen and bamboo-striking.**

Much dissatisfaction was caused at this time by a Government notification that watchmen were no longer to be allowed to strike their bamboos at night, as was their wont, to let their employers know that they were "awake and watchful"! The notification was as follows :—

"Whereas the noise made by the Chinese watchmen has proved a public nuisance, and a more effectual means of ensuring their vigilance may be substituted in the severe punishment of those whose remissness is proved, notice is hereby given that they will no longer be permitted to strike their bamboos during the night.

By Order,

(Signed) FREDERICK W. A. BRUCE,
*Colonial Secretary.*

Victoria, Hongkong,
22nd August, 1844."

**Chinese custom of bamboo-striking.**

It would appear that from an early period of the Colony, owing to the insecurity of property and the inefficiency of the police, it had been found necessary by the principal inhabit-

* Graduated at Trinity College, Dublin; entered King's Inn, Dublin, and Gray's Inn, London; called to the Irish Bar, Michaelmas Term, 1829.

ants to employ private watchmen. These watchmen, by a custom which was said to be universal in China, in going their rounds, used to beat two pieces of bamboo on purpose to inform their employer that they were awake and watchful. It was alleged that without "this evidence there was a continual dread, and the man who, in this exhausting climate, had been busily employed during the day, could not rest in quiet during the night, from fear that the watchman was asleep and robbers cutting through the walls of his house." The offender in relation to the stoppage of these "bamboo-strikings" at night would appear to have been the General Commanding the Forces, Major-General D'Aguilar. His residence is said to have been situated in a part of the town where there were many private watchmen, and the sound of the bamboo-beating was offensive to his ear—"sleep, sweet sleep, was banished from the warrior's pillow." The comments, continuing, said "that because an elderly gentleman could not sleep soundly, with the bamboo sounding in his ear, the thousands of treasure and goods in the godowns, stores, and houses of the inhabitants, would be laid open to the depredations of robbers, from whom the parental Governors would not protect the people, nor allow them to protect themselves. An Order of Council had been published, prohibiting the beating of bamboos—the General may quietly sleep—but uneasy rest the poor wights who have dollars in the money chest." Such were said to be the motives for this "extraordinary act"! The carrying of the order into effect was, of course, entrusted to the Police, who rightly deprived the watchmen of their bamboos, but rattles, gongs, and bells were quickly substituted therefor. As the result of a contravention of the order, it is recorded that in one case a gentleman delinquent, "after having his premises invaded by a policeman who deprived the watchman of his bamboo," was fined five dollars by the Chief Magistrate. For many a long day the "bewailments" of the Hongkong people continued regarding the stopping of this "bamboo-beating" at night, and much amusing correspondence appeared in the papers of the day upon the subject, but the authorities were obdurate and determined to put a stop to what after all now-a-days can only be looked upon in the light of ridiculous nonsense; especially any one having the slightest experience of the trickery and deceit of the natives, and therefore the utter uselessness of any security that the noises caused by the striking of the bamboos could have afforded. The authority under which the Order in question was founded was section 1 of Ordinance 5 of 1844, which provided for the punishment of any such nuisance as that which this "bamboo-beating" must really have been. The General, no doubt, who had himself greatly co-operated in increasing

Fine imposed by Chief Magistrate for contravening the order against bamboo-striking.

Bewailings of Hongkong people in consequence of stoppage of bamboo-striking.

Ordinance No. 5 of 1844, s. 1.

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Major-General D'Aguilar instrumental in stopping bamboo-striking. Ordinance No. 17 of 1844.

the vigilance of the night police by granting military aid, apart probably from his own experience of these private watchmen, who in themselves had caused no inconsiderable trouble to the authorities, had concluded that the sooner they and their bamboos were got rid of the better for every one, including himself, and this he finally effected by passing, while Governor "for the time being," Ordinance No. 17 of 1844, "for better securing the peace and quiet of the inhabitants of the town of Victoria and its vicinity during the night time," the preamble fully explaining its purport and that "the said nuisance should be suppressed."

Governor Davis inspects northern ports.

Major-General D'Aguilar administers Government *pro tem.*

The Governor, Mr. Davis, was now in China, having left by the *Agincourt* with Rear-Admiral Sir Thomas Cochrane, Commander of the Naval Forces in China, on the 28th August, on a visit of inspection to the northern ports, and Major-General D'Aguilar, the General Commanding and Lieutenant-Governor of Hongkong, had assumed the administration of the Government pending the Governor's return.

Renewed complaints at non-opening of the Supreme Court.

Complaints were now heard again and indignation expressed at the non-opening of the Supreme Court, though both the Chief Justice and Attorney-General had been in the Colony for some considerable time. In the absence of any reason to the contrary, the public having apparently been kept entirely in the dark, endless conjectures were formed as to the real reason for not opening the Court. It was hinted that it did not suit the Government to open the Courts, and that justice would continue to be doled out by the Magistrate of Police, Major Caine, whose honourable and active career in arms had but little qualified him for the Bench in cases where points of law had to be decided, and he too now came in for a share of the abuse. There was a degree of cruelty, it was said, in imposing heavy responsibilities upon this gentleman now that there were public servants of the Crown idle in the Colony, though they had been sent out to fill appointments which they appeared to think merely nominal, and which could only be estimated when it was considered in how many instances the Magistrate had laid himself open to censure by dispensing law which was not English law, "but Pottinger law, and which was not legalized" (*sic*). On the 7th September, it had been generally expected that amongst the last published Government Notifications, a notice of the immediate opening of the Court would have appeared. No such notice, however, had appeared. Again conjectures were formed. It was suggested that perhaps His Honour the Chief Justice was too much engaged with legislative duties to attend to judicial matters, or that the 'secret council' had greater charms than the open Court,

and that it was an easier and a more pleasant task to make laws than to dispense them. Many reasons were assigned for the delay. One reason, it was thought was that Mr. Hulme had left "his law (library)" at the Cape, hearing it would inconvenience him in Hongkong. Another was that enervated by the climate, the arduous duties of the Council, and the difficulties he had encountered in finding a suitable house, he was already incapable of undergoing the fatigue of the bench, and the abuse heaped on him finally ended with the assertion "His Honour had helped himself to a house, more on the principle that might makes right, than that of doing as we would be done by." Still no attention was paid to this 'bewailing of the multitude.' The following skit upon the state of affairs consequent upon the non-opening of the Supreme Court appeared at the time under the signature of a humorous writer—"A Modern Confucius":—

Chief Justice Hulme abused in consequence.

Skit upon state of affairs.

* * * *

The period having arrived when that great adjunct of civilization, a Supreme Court, was to be established in the land, it became a matter of delicate speculation, how the ardent lieges of Victoria were to be restrained from surfeiting themselves, at this great fount of Law and Justice. After sundry meetings in Downing street, the expedient was hit upon of sending out the requisite officers separately, and thus familiarizing the Victorians to the presence of a portion of them before the arrival of the whole. In order, however, that the people should have the full benefit of their new institution, the Home Government considerately sent them out a barrister, but, in so doing, evinced the same forethought as to the avoidance of display, by wrapping the learned gentleman up in a Consul's cloak.

The wisdom and prudence exhibited in these proceedings were soon exhibited in Hongkong.

On the arrival of the Chief Justice,

"he could not stir,
"But, like a comet, he was wondered at,
"Men would tell their neighbours, *that is he*;
"Others would say, where? has he the Statute Book?"

Such being the state of the public mind on the arrival of one or two members of the great tribunal, what would it have been had the whole Court arrived together and defiled before the multitude? We verily believe the most extravagant scenes would have ensued. Neighbour would have assaulted neighbour, from the sheer desire of being tried by his Peers, and favoured with a bumper of English justice. Even the Poppy Lords of the land, those mighty *noblesse*, who, being rich, can appeal to the House of Commons, could have scarcely preserved their wonted composure. Like the shipwrecked seaman, whom attachment to rum led to tap the powder barrel with a red hot iron, they would, one and all, have gained access to the hall of Justice at any risk. But wisdom

"O'er their wild mood full conquest gained,
Their noisy watchman's hand restrained,
Sent their fierce zeal on a homelier cruise,
And stopped the freeman's arm, to aid the freeman's snoose."

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Result of scandalous delay in opening Supreme Court.

It was a matter for regret that during all this time the authorities had not taken steps of some sort to remedy a state of affairs which now-a-days would be considered scandalous, or, at all events, to let the people know why the Supreme Court had not been and could not be opened. In the first place this, so far as was known, very unnecessary, delay had been the cause of serious injury to the community. More than one person had left the Colony in debt, there being reason to believe that, if willing, they could have liquidated all claims upon them, and yet their creditors could not stop them. On the 19th August, 1844,

Ordinance No. 6 of 1844.

the Consular Ordinance No. 6 of 1844, "authorizing the execution of the process of the Supreme Court of Hongkong in certain parts within the Dominions of the Emperor of China," was passed though not published till late in September. The publication of this Ordinance, it was hoped, was only preparatory to the opening of the Supreme Court. Indeed, the publication of this Ordinance, followed shortly after by the publication of Ordi-

Ordinance No. 15 of 1844.

nance No. 15 of 1844, (dated 21st August, 1844,) in a *Government Gazette* Extraordinary of 21st September, 1844, "to establish a Supreme Court of Judicature at Hongkong" disclosed in themselves the reason why the Supreme Court until now had not been opened. Though the Chief Justice and Attorney-General had arrived in the Colony for some months, it was evident that the proper machinery, both for the opening of the Court and as to the law and procedure to be applied, was wanting, and until this had been duly provided, no Court could possibly be held and that both the Chief Justice and Attorney-General had been constantly occupied in the preparation and passing of the necessary laws for the working of the Court, and, as experience showed, had in the meantime been unjustly and unnecessarily abused. The Ordinance establishing the Supreme Court had been elaborately drawn up, disclosing great care and ability, and must have demanded great consideration and attention at the hands of the judicial authorities, for it contained no less than 137 sections. By section 1 of the Ordinance, "the Court at Hongkong with criminal and admiralty jurisdiction, which had hitherto been holden by the Chief Superintendent" as hereinbefore mentioned, and which, it will be remembered, had been but once opened in the Colony, in March, 1844, by Sir Henry Pottinger, was declared abolished, and section 3 enacted that the laws of England should be in full force, except that in criminal proceedings against the Chinese, it would, to a certain extent, be lawful to try the offenders by the laws of China. But this Ordinance did not long remain in force, and in August, 1845, it was repealed by Ordinance No. 6 of

Ordinance No. 6 of 1845.

that year. This latter enactment related solely to the establishment of the Supreme Court, and many clauses having reference

to forms which had a place in its predecessor were now omitted, as was also the clause granting to the Court vice-admiralty jurisdiction and power to punish Chinese according to the laws of China. In the first Ordinance there were 71 clauses referring to the Supreme Court, in the second, only 30, the latter Ordinance being further repealed in part by Ordinance No. 2 of 1846.

Ordinance No. 2 of 1846.

# CHAPTER III.

## 1844-1846.

## SECTION I.

### 1844.

Opening of the Supreme Court.—Admissions to practice.—Attorneys' oaths.—Ordinance No. 4 of 1860, s. 13.—First Criminal Sessions of the Court.—First criminal case heard.—Report of the proceedings of the first Criminal Sessions of the Supreme Court.—Mr. Cay, Registrar, a Commissioner for taking affidavits.—Death of Chief Justice's daughter;—the Court adjourns.—Indisposition of Chief Justice.—The Registration Ordinance No. 16 of 1844. Public opposition.—Ordinance included Europeans.—Public meeting.—Opposition of Europeans and Chinese.—Strike of Chinese labourers.—Meeting of compradores.—Shops and market close.—Disturbances and arrests.—Memorial to Governor.—Memorial returned by the Governor.—Committee petition the Legislative Council.—Business stopped.—State of affairs.—Government Notification. Operation of Ordinance suspended.—Deputation of Chinese to Governor.—Governor declines to receive petition.—Governor declines further communication with Committee appointed by public meeting.—Further public meeting.—Proclamation by Governor that he returned the memorial because couched in improper language.—Government Notification accusing Englishmen of tampering with the Chinese in their opposition to the Ordinance.—Protest of Europeans against the accusation.—British subjects in Canton address the Governor on the measure.—Conclusion drawn as to the Ordinance.—Dr. Bowring's motion in House of Commons.—Mr. Hope and Sir G. Staunton compliment Governor Davis.—Dr. Bowring withdraws his motion.—The mistake of the local Government.—Ordinance No. 18 of 1844.—Less inquisitorial than its predecessor.—Effect of hasty legislation and opposition by natives to local laws.—Ordinance No. 18 of 1844.—Ordinance No. 7 of 1846.—Lawless characters in the island.—Land.—Government Proclamation respecting mat-houses and sheds in the Queen's Road.—Triad Secret Society.—Transportation.—First execution in Hongkong.—Ecclesiastical and other Orders of Court disallowed by Home Government.—Report of 'Head Constable and Jailer' respecting the first batch of transported European convicts.—Land.—Balconies and verandahs.—Lord Stanley's Despatch regarding land sales and Crown leases.—Second Criminal Sessions of the Supreme Court.—The year 1844. Improvement in judicial affairs. General review.

## SECTION II.

### 1845.

The Census and Registration Office. Ordinance No. 18 of 1844.—Ordinance No. 7 of 1846.—Ordinance No. 1 of 1845.—Triad and other Secret Societies.—Branding.—Ordinance No. 12 of 1845.—Summary Jurisdiction of the Supreme Court.—Probate and Administration.—Admission of W. H. Goddard and W. Tarrant as Attorneys.—Ordinance No. 15 of 1841, s. 10.—Ordinance No. 6 of 1845, s. 11.—Auction duty. Ordinance No. 21 of 1844.—Professional men advertising in Hongkong.—Jurisdiction exercised by H. M.'s Consuls.—Ordinance No. 7 of 1844.—Expenditure of Colony.—Parliamentary Vote.—Judicial Expenditure.—Chinese prisoners sentenced to death commit suicide.—Arrival of Mr. Charles May, Superintendent of Police with two Inspectors.—Ordinance No. 12 of 1844.—Captain Bruce relinquishes Police duty.—Inspectors Smithers and McGregor.—Extraordinary conduct of Lieutenant McDonald towards Major Caine as Sheriff.—Action against Lieutenant McDonald.—Writ issued against him.—Lieutenant McDonald orders the arrest of the Bailiff by a military guard.—He writes an insulting letter to Major Caine. Sheriff, and offers to fight him in a duel.—He is Court-martialled and punished.—Captain Jeffery reprimanded.—Major-General D'Aguilar's minute, and on duelling.—Rule of Court providing for service of process on military officers by other than a soldier, disallowed.—Lieutenant Pedder, Harbour-Master and Marine Magistrate, takes leave.—Changes in consequence.—Mr. S. Fearon.—Mr. A. Lena.—Levée by the Queen. Distinguished officials from China presented.—'Chuck-chu' and 'Shuckpai-wan' called 'Stanley' and 'Aberdeen'.—Capture of pirates by Mr. Lena.—Serious attack upon Chinese

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## 1846.

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**Opening of the Supreme Court.**

As now constituted, the judiciary was complete, and on Tuesday, the 1st October, 1844, the Supreme Court was formally opened with the ceremonies and solemnity consistent with such occasions, in the presence of a large crowd of both Europeans and natives, the Chief Justice taking his seat on the bench punctually at ten o'clock. There were present in Court the

Colonial Secretary, the Attorney-General, the Police Magistrate, Mr. Cay, the Registrar, Mr. Smith (previously clerk to Mr. Burgass), Clerk of the Court, Mr. Henry Charles Sirr, barrister-at-law, Mr. Edward Farncomb, solicitor, besides several other officers of the Government and some of the leading residents of the Colony. After the Registrar, Mr. Robert Dundas Cay, had read the several documents relating to the constitution and opening of the Court, the Court adjourned to the 2nd at 10 o'clock. Before adjourning, the Chief Justice admitted to practice Mr. Edward Farncomb, an English solicitor who had previously been in practice in the Colony, as an attorney, and Mr. Paul Ivy Sterling, the Attorney-General, and Mr. H. C. Sirr, barrister-at-law, as barristers of the Court. The attorneys were required to take the oaths of allegiance, good behaviour, supremacy, and abjuration, which they duly subscribed to. This system lasted until the passing of Ordinance No. 4 of 1869, relating to "Promissory Oaths," on the 24th September, 1869, when by section 13 of that Ordinance the oath of allegiance was alone substituted for the oaths of allegiance, supremacy, and abjuration. On the 2nd October, the Criminal Sessions began punctually at ten o'clock, presided over by the Chief Justice, the Attorney-General prosecuting on behalf of the Crown. Except for the "Criminal and Admiralty Court" presided over by Sir Henry Pottinger under the old law, this was the first time a regularly constituted Criminal Court for trial by jury, had sat in China. The first case tried was one of abduction. The prisoners, husband and wife, through false pretences, had induced two young women to enter their boat. After they had embarked, they were bound and carried up the Canton River, and there sold for ninety dollars each. Their friends in Hongkong, hearing of this, went to Canton and paid $220 for their ransom. After their return, the prisoners also came back, when they were apprehended by the Police. The prisoners were each sentenced to eighteen months' imprisonment, the male prisoner to be kept at hard labour and "exposed in the market-place once a month." A report of the proceedings on this, the first occasion that the Court sat on its criminal side, mentions that "the business of the Court was carried on with that decorum which ever characterises a British Court of Justice. There was no opportunity for any display of eloquence, and with very good taste none was attempted, either by the Chief Justice or Attorney-General. His Honour read over the evidence to the Jury, who could not do otherwise than return a verdict of guilty. It was with much pleasure that the Attorney-General was heard explaining that the English laws were not laws of vengeance, but were intended to protect the innocent by the punishment of guilt,

Admissions to practice.

Attorneys' oaths.

Ordinance No. 4 of 1869, s. 13.

First Criminal Sessions of the Court.

First criminal case heard.

Report of the proceedings of the first Criminal Sessions of the Supreme Court.

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not to punish guilt by mere vindictive feelings. Now that the laws were in active operation, and a few severe examples were likely to be made, the Chinese would hold them in greater regard than heretofore, and crime would decrease." By document under his hand, the Chief Justice, on the 5th October, appointed Mr. R. D. Cay, the Registrar, to be a Commissioner for taking affidavits. Shortly after the opening of the Criminal Sessions, the Court had to adjourn, the Chief Justice meeting with a severe domestic calamity by the death of his daughter. After adjourning for a week, the Court again adjourned to a later date owing to the indisposition of Mr. Hulme.

Mr. Cay, Registrar, a Commissioner for taking affidavits.

Death of Chief Justice's daughter; the Court adjourns. Indisposition of Chief Justice.

On the 21st August, 1844, the Legislature had passed Ordinance No. 16 of 1844 "for establishing a Registry of the Inhabitants of the Island of Hongkong and its Dependencies." As its preamble denoted, it was passed in order to "secure tranquillity and good order in the Colony, and to prevent the resort thereto of abandoned characters, and of persons without any ostensible means of subsistence." Taken in conjunction with previous steps relating to this subject, the Ordinance was well meant and perfectly justifiable under the circumstances. In its drafting it denoted considerable forethought, and showed that the Government was in earnest in endeavouring to do everything in its power to stamp out crime. But unfortunately, though well meant, and aiming principally at the Chinese inhabitants, it was too general in its terms and included every European resident in the Colony, and no surprise need therefore be evinced at the storm of indignation which it occasioned. The condition of the island made such a measure almost indispensable, but it went too far in its requirements that every merchant, and others duly specified, should take out a registration ticket for which a fee of five dollars was payable. "We were somewhat startled on a first perusal of this Ordinance," says a local print of the time, "to perceive that it included the entire population of the island, and had we a voice in the matter, we would certainly object stoutly to being included in the Registry. A white face should certainly be a sufficient passport in any British Colony, and in point of fact, with the exception of Hongkong, we know of no British Colony where a passport is necessary, but we must bear in remembrance that Hongkong is an anomaly in colonial history, and that we must not seek elsewhere for precedents for measures which here are unavoidable .....but we must assert that it will be with feelings of humiliation, we will pay our five dollars to the Registrar-General for a bit of paper descriptive of our appearance, etc." Accordingly, an indignation public meeting was held on the 28th October, shortly after the Ordinance had been published, to petition His Excellency the Governor and the members of the Legislative Council against

The Registration Ordinance No. 16 of 1844. Public opposition.

Ordinance included Europeans.

Public meeting.

the Ordinance as being arbitrary and unconstitutional. The including of all Europeans, and the making it compulsory for them to take out a registration ticket, *primâ facie* made the measure objectionable, especially so to British subjects in a British Colony, but there can be no doubt that the end the Government had in view, with an eye to the future especially, was to include *every* bad character now or afterwards to be found in Hongkong, though the declared intent of the Ordinance was to protect the Colony from the outrages of disreputable Chinese. This opposition of the better classes to the enactment led on the Chinese to do likewise, and they very soon began to show their intention of bodily refusing to comply with its terms. On the 31st October, the day before the Ordinance came into operation, the Chinese labourers employed by the Government, as well as those employed by private individuals, struck, and works of all description were for the time stopped. A meeting of compradores was held on the same day and they resolved to leave the island, and on the 1st November, the day on which the Ordinance came into operation, all the shops and the market were closed, people ceasing to bring in provisions. Disturbances occurred during the day. One party refused to carry down provisions to the barracks or commissariat, and some of the culprits being arrested and flogged. On the 28th October, as the result of the meeting alluded to, a Committee was appointed and a memorial embodying certain resolutions drawn up for presentation to the Governor, who afterwards intimated his willingness to receive the deputation on the 30th. On the same day the memorial was duly returned, the Governor deeming the language in which it was termed objectionable. After further correspondence, the Committee petitioned the Legislative Council,—which really meant the Government, for the Council consisted up to this time entirely of officials,—requesting that steps might be taken to suppress the agitation which existed amongst all classes in consequence of the publication of the Ordinance. All business was completely suspended, no boats could be procured for discharging or loading the numerous vessels lying in the harbour, communication with Canton was entirely stopped, and no provisions were brought in. The Government, evidently fearing further disturbances, caused the following notification to be published, suspending the operation of the Ordinance, which notification, however, though dated the 31st October, did not appear till the 2nd November:—

Opposition of Europeans and Chinese.

Strike of Chinese labourers.

Meeting of compradores.

Shops and market close. Disturbances and arrests.

Memorial to Governor.

Memorial returned by the Governor. Committee petition the Legislative Council.

Business stopped. State of affairs.

Government Notification. Operation of Ordinance suspended.

GOVERNMENT NOTIFICATION.

The Government, having with ease suppressed the only seditious riot that has occurred with reference to the Registration Ordinance, and secured the offenders, is now ready to attend to any respectful as well as peaceable representations on the subject of the said Ordinance.

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With this view its operation is for the present suspended and the Government will always be prepared on this as on every other occasion, to modify or even abrogate its enactments in consideration of reasonable and proper representations, though seditious movements must be met with the severity they merit.

By Order,

ADOLPHUS E. SHELLEY,
*Clerk of Councils.*

Council Chamber,
Victoria, Hongkong, 31st October, 1844.

Deputation of Chinese to Governor. Governor declines to receive petition.

A deputation of Chinese also presented a petition to the Governor on the 1st November, relative to the Ordinance, but he declined to receive it until the shops had re-opened and the people returned to their work.

Governor declines further communication with Committee appointed by public meeting.

On the 2nd, the Governor caused the Committee to be informed that all further communications must cease between the Government and themselves owing to their unbecoming persistance in the expression of their opinions in disrespectful language, however veiled by their disavowal of intentional disrespect to himself and Council.

Further public meeting.

A public meeting was held on the same day to consider the correspondence that had passed between the Committee and the Governor-in-Council.

Proclamation by Governor that he returned the memorial because couched in improper language.

A proclamation issued to the public by the Governor stated that a memorial, presumably the one previously mentioned, worded in improper and disrespectful language, had been returned to the memorialists and notice given that memorials or petitions properly and respectfully worded would be received by the Governor and full consideration given to them.

Government Notification accusing Englishmen of tampering with the Chinese in their opposition to the Ordinance.

In consequence of a Government Notification, dated the 2nd November, accusing certain Englishmen of tampering with the Chinese in their movement with respect to the Registration Ordinance, opportunity was taken by the European inhabitants at once to publicly repudiate "in the strongest terms the unmerited accusation against the British community."

Protest of Europeans against the accusation.

On the 6th November, the British subjects in Canton also addressed the Governor regarding the measure in question, who caused them to be informed that documents of the kind should be transmitted through the Consul.

British subjects in Canton address the Governor on the measure.

That this Registration Ordinance was the result of the many praiseworthy endeavours the Government had made, from time to time, to prevent the resort hereto of *bad characters* in the general belief that a system of registration was probably about the best method to be employed in checking crime, there could be no doubt, and in this the Home Government concurred, though agreeing that probably the present Ordinance was rather too inquisitorial in character.

Conclusion drawn as to the Ordinance.

Dr. Bowring's motion in House of Commons.

On the 26th February, 1845, Dr. Bowring moved in the House of Commons for a copy of the correspondence which had been received from Hongkong relative to the Ordi-

nance and the subsequent withdrawal thereof, but he was refused a copy, Governor Davis not then having reported his reasons for abrogating his own act. Some regulation of this kind was considered necessary, though one less inquisitorial in character than that referred to. Mr. G. W. Hope and Sir George Staunton both complimented Governor Davis on his former services in China, and therefore thought that, in the absence of information on the subject, Mr. Davis was entitled to credit for believing that such a regulation was necessary. Dr. Bowring, in withdrawing his motion, intimated his intention to bring it forward on a future occasion. The great mistake the local Government, however, had committed consisted in publishing the Ordinance, the requirements of which were previously quite unknown, only a few days before its coming into operation, and it was no wonder that the resentment and agitation which arose reached even to England. Whether the matter ever came up again before Parliament or not, the records do not show, but probably not, as the local legislature not long after passed Ordinance No. 18 of 1844, by date the 13th November, 1844, the effect of which was "to establish a registry and census of the inhabitants of the island of Hongkong." Although this Ordinance had the same object in view as the one it repealed, it was less inquisitorial, and, moreover, did away with the obnoxious fee which, as regards the Chinese, was probably the principal reason why they had opposed it. But, as a local paper remarked, not unnaturally perhaps, such hasty legislation wherein the public had had no voice whatever nor had ever been consulted, to a certain extent "lowered the English character in the estimation of the Chinese. They might on some future occasion attempt to starve their rulers into a compliance with their wishes, and it would require some wholesome discipline to convince them that the Government is not always to be intimidated." Thus ended a matter which had caused no end of discussion and a great commotion in the Colony, showing the public spirit with which the people were animated even at this early period of its history. Ordinance No. 18 of 1844 continued in force as late as the 31st December, 1846, when Ordinance No. 7 of that year, in effect, the same as its predecessor, passed the Legislative Council.

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Mr. Hope and Sir G. Staunton compliment Governor Davis.

Dr. Bowring withdraws his motion.

The mistake of the local Government.

Ordinance No. 18 of 1844.

Less inquisitorial than its predecessor.

Effect of hasty legislation and opposition by natives to local laws.

Ordinance No. 18 of 1844.

Ordinance No. 7 of 1846.

In October, 1844, the Government appeared quite in earnest to do everything in its power to rid the place of the lawless characters that infested the island. A large number of Chinese had, moreover, come to Hongkong and taken possession of land in different localities for erecting their dwellings and carrying on their business, without any grant or permission. To check this, by a proclamation published on the 21st October, it was

Lawless characters in the island.

Land.

Government proclamation.

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respecting mat-houses and sheds in the Queen's Road.

announced that the pulling down of the mat-houses and sheds and, in some cases, even wooden houses which had been built upon the Queen's Road and at divers places along the coast of the island, without authority or the payment of any rent, and which there was every reason to believe gave shelter to thieves, had been determined upon and warning was given accordingly. The following was the proclamation which was translated into Chinese and circulated throughout the island :—

GOVERNMENT PROCLAMATION.

"Whereas a great number of Chinese and others have, without permission, and in direct opposition to law and custom, settled themselves upon the Queen's Road and at divers places along the coast of this island, and have there erected mat-houses, and in some instances even wooden houses, wherein they live and carry on business without paying any rent to the Crown for the land so occupied:

"This is to give notice, that the Surveyor-General of this Colony has received my commands to give the aforesaid persons notice to remove themselves and structures within a reasonable time and at his discretion, and, in default of their doing so, to eject them and remove their mat-sheds and other structures.

"This proclamation to be translated into Chinese and circulated throughout the island.

"God save the Queen.

(Signed) J. F. Davis,
*Governor, etc.*"

Victoria, Hongkong, 21st October, 1844.

Triad Secret Society.

The records disclose a raid by the Police on the 31st October, upon a secret association of Triad which had exercised evil influence over the Chinese in the Colony. A body of Police captured 17 members of the society, who made desperate efforts to get away. These societies had already been the source of much trouble to the Government, their existence leaving no doubt as far back as July, 1842, and stringent legislation in regard to them now seemed inevitable.

Transportation.

First execution in Hongkong.

On the 31st October, Government advertized for a passage to Norfolk Island or Van Diemen's Land (under the Order of March and June, 1844, before alluded to, but in ignorance evidently that the same had been rescinded as before stated), for nine convicts sentenced to transportation thither at the last Criminal Sessions. A native camp follower, who had also then been sentenced to death for the murder of a European Sergeant at Chuck-chu, was executed on Monday morning, the 4th November, 1844, having previously embraced Christianity through the efforts of the Roman Catholic priest who had attended him. This was the first execution recorded in Hongkong.

Ecclesiastical and other

The Supreme Court passed some important rules dealing with

its ecclesiastical jurisdiction on the 11th November, but these, with subsequent Orders, were disallowed by the Home Government, intimation to that effect being given on the 26th March, 1847.

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Orders of Court disallowed by Home Government.

According to a report by Sergeant James Collins, styled "Head Constable and Jailer," dated the 15th November, 1844, ten prisoners were transported beyond sea on the 12th of that month. "These criminals," says the report, "were taken from gaol on the morning of the 12th November and put on board a vessel lying in the harbour, which soon after got under way and proceeded to sea, destined to New South Wales. They were all supplied with Christian books—bibles and tracts. Their accommodations on board ship were very good, and the room in which they were confined was light and airy and sufficiently spacious." The prisoners were presumably Europeans, although no mention is made of that fact.

Report of 'Head Constable and Jailer' respecting the first batch of transported European convicts.

At this time it was found that the lot-holders had encroached on Crown land, and on the space set apart for streets, by building balconies and verandahs outside the limits of their lots. The removal of these buildings was directed by the Governor, and the following Government Notification of the 19th November, 1844, to that effect was published :—

Land, Balconies and verandahs.

GOVERNMENT NOTIFICATION.

"As it has come to the knowledge of His Excellency the Governor, that persons have encroached on the property of the Crown, and on the space set apart for streets, by erecting buildings and constructing balconies and verandahs, extending beyond the limits of the lots held by them on lease, His Excellency has given instructions to have the encroachments removed; and warns all persons, that no permission will in future be granted to any one to exceed the boundaries of his lot, on any pretence whatever.

"By Order,

(Signed) FREDERICK W. A. BRUCE,
*Colonial Secretary.*

Victoria, Hongkong, 19th November, 1844.

In this year discussions took place with regard to the granting of Crown lands on lease for the short term of 75 years, instead of by grant in perpetuity, and great dissatisfaction was expressed by the lot-holders at the terms imposed upon them. The matter was brought before the Secretary of State, Lord Stanley, who, in a despatch dated the 19th November, 1844, and addressed to Governor Davis, reviewed the question of land sales and the Crown leases to be granted, as follows :—

Lord Stanley's Despatch regarding land sale and Crown leases.

"Adverting now to the discussion which has taken place in regard to the period for which the lands have been assigned upon lease, instead of being granted in perpetuity, I must observe, that the subject does not admit of any claim of right. Neither Captain Elliot nor Mr. Johnston were armed with any authority to dispose of the public lands, and it was expressly announced

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by the former officer, under whom the principal sales took place, that they must be subject to Her Majesty's pleasure. But it has, of course, been the wish of Her Majesty's Government to deal with the holders of these lands equitably; and the only question is, whether the leases that have been decided on, sufficiently effect this object? It is at least some presumption in their favour that without concert the same view should have been adopted at nearly the same moment by myself in this country, and by a board of officers in Hongkong; and Sir H. Pottinger has pointed out, in his answer to the gentlemen who wrote to him on the subject, that at the recent public sales higher rates had been voluntarily given than they were called upon to pay. They have answered, indeed, that the sales were of a fictitious and speculative character, and could afford no real test of value. Nevertheless, it would be difficult, as Sir H. Pottinger has observed, to apply any better test of value than sale in a fair and open market.

Under these circumstances, after fully reconsidering the matter as brought under my notice in these despatches, I continue to adhere to the decision expressed in my despatch of the 3rd January last, that the leases of town and suburban lots for building purposes should not exceed 75 years, subject, of course, to the discretion of the Government to grant renewals from time to time. The reports which I have recently received from you sufficiently show that the terms fixed for the disposal of land in Hongkong have been no discouragement to building speculations, nor to the purchase of land at high rents.

Having thus decided on the more important and general question raised by these despatches, it is necessary that I should advert to a minor point brought under my consideration by Sir H. Pottinger's despatch, No. 3 of 22nd January last. In that despatch is enclosed a statement of fees to be taken in the Land Office, which had been approved by the Council and himself. To the last three items in this schedule I do not object, but the first three charges appear to me excessive. They are as follows:—

| | | | | |
|---|---|---|---|---|
| Preparing any lease or grant | 10 | per cent. | on the amount of annual rental. |
| Affixing public seal thereto | 5 | ,, | ,, | ,, |
| Registering any assignment, mortgage, or other alienation | 5 | ,, | ,, | ,, |

In the first place, the principle of an *ad valorem* fee, where the amount of trouble must be the same in every case, appears to me erroneous, and calculated unnecessarily to impose a disadvantage on large purchasers; and in the next place, the rate of these fees, considering the amount of the rents which have been realized, seems to be excessive.

The rental disposed of is stated by Sir H. Pottinger at £15,000 per annum, and the two first of the above fees constituting a charge of 15 per cent., it would follow, assuming Sir H. Pottinger's calculation to be correct, that the public must have been called upon to pay £2,250 to the Land Office for fees upon transactions not very numerous in themselves, and which so exactly resembled each other as to entail no additional exertion or responsibility. I am of opinion that the principle of an *ad valorem* fee should be at once abandoned, and that the Attorney-General should be called upon to prepare a standing form to be in future used in such transactions; and that having received from Government, once for all, a suitable remuneration for his trouble in preparing that form, no further charge should be made against the public on this account. For affixing the public seal, and for registering transfers or mortgages, moderate and certain fees should be established, the amount of which you will, of course, report for my approval; but I am disposed to think that they should not, at least for affixing the seal, exceed five dollars."

The second Criminal Sessions closed on Saturday, the 21st December. Rated in proportion to the population, the calendar was heavy, but when the character of the natives is considered, it was less than might have been expected at this early stage of the settlement of the Colony.

1844. Second Criminal Sessions of the Supreme Court.

The end of 1844 marked a decided improvement in the judicial affairs of Hongkong. The establishment of a night Police, the comparative security from robbery, and the constitution of the Supreme Court formed an era in the judicial history of the Colony. The registration question also formed an important factor in the year's legislation. The astonishment of the public that such an Ordinance had passed the Legislative Council was only surpassed by that felt at its ultimate withdrawal through the opposition of the inhabitants. The Legislature passed no less than 22 Ordinances during the year, some of them of considerable length and importance, showing the zeal and industry that distinguished the legal authorities especially, during this eventful year. The conclusion of war with China belongs to the transactions of 1843, but 1844 saw the ratification of the treaty by which some of the ports of the Celestial Empire were opened to the commerce of the whole of Europe and America. Sir Henry Pottinger, to whose judgment and skill this state of things was owing, received the highest tributes from the trading towns of Great Britain and Ireland, and the Queen herself conferred upon him certain distinctions in token of her approbation of his conduct.

The year 1844. Improvement in judicial affairs. General review.



The Census and Registration Office, created by section 1 of Ordinance No. 18 of 1844, which, it will be remembered, superseded and repealed the obnoxious Ordinance No. 16 of the same year, opened on the 1st January, 1845, as directed by section 2 of the Ordinance, and the Registrar-General, Mr. Fearon, was now busily engaged with the arduous duty of numbering the native population of the Colony. The possibility of rendering the system complete and efficacious in checking the settlement of bad characters was doubted, but as to the desirability of the measure there could be no doubt. This Ordinance remained in force until superseded by Ordinance No. 7 of 1846, passed on the last day of that year. The first Ordinance to pass the Legislature in January, 1845, was that dealing with the suppression of the Triad and other secret societies, which were known to exist largely and to be the source of much evil. The Ordinance was necessarily severe, branding being provided for, and causing much discussion, but in October following, doubtless upon instructions from Home, an amendment was effected by which branding was done away with and the Ordi-

1845. The Census and Registration Office. Ordinance No. 18 of 1844.

Ordinance No. 7 of 1846. Ordinance No. 1 of 1845. Triad and other Secret Societies.

Branding.

Chap. III § II. nance not made applicable to any secret society other than the Triad (Ordinance No. 12 of 1845.)

1845.

Ordinance No. 12 of 1845.

Summary Jurisdiction of the Supreme Court.

Probate and administration.

Early in 1845, the Registrar, Mr. Cay, duly notified that the Court would sit once a month for the trial of cases under its summary jurisdiction, the first sitting being fixed for the 13th January. From an early time in the year, all applications for probate and administration began to be duly advertized also, and next of kin warned to appear on the day of hearing and produce the wills or codicils of those deceased persons who had left property in the island, or, if there was no such will or codicil, to accept or refuse letters of administration or show cause why administration should not be granted to the Registrar of the Court. These notices were signed by the Registrar or his deputy, Mr. F. Smith, and the practice thus established of advertizing, even as to the different sittings of the Court on its various sides, seems to have lasted for a considerable period.

Admission of W. H. Goddard and W. Tarrant as attorneys.

Ordinance No. 15 of 1844, s. 10.

Ordinance No. 6 of 1845, s. 11.

The Court on the 13th January, admitted Mr. W. H. Goddard, an English solicitor, and Mr. W. Tarrant, previously in the merchant service, as fit and proper persons to appear and act as attorneys of the Court. Both these gentlemen were, however, appointed temporarily under the powers vested in the Court under section 10 of Ordinance No. 15 of 1844, subsequently disallowed by the Secretary of State, but replaced by Ordinance No. 6 of 1845, which was passed on the 19th August, 1845, and which contained substantially the provisions of section 10 mentioned above as reproduced in section 11 of the said last-mentioned Ordinance.* On Mr. Goddard's application to be further allowed to act as a barrister, the privilege was allowed him only in such cases as he might be engaged in.

Auction duty.

Ordinance No. 21 of 1844.

At a meeting of Council held at Government House on the 15th January, a resolution was passed remitting on certain sales the auction duty of $2\frac{1}{2}$ per cent. imposed under Ordinance No. 21 of 1844, which related, *inter alia*, to pawnbrokers and auctioneers, the same being duly published for general information on the 28th January of the same year.

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* The following was section 10 of Ordinance No. 15 of 1844 :—

"10. And be it further enacted and ordained, that in case there shall not be a sufficient number of such barristers-at-law, advocates, writers, attornies, solicitors, and proctors within the said Colony, competent and willing to appear, and act for the suitors of the said Court, then, and in that case, the said Supreme Court of Hongkong shall, and is hereby authorized to admit temporarily so many other fit and proper persons to appear and act as barristers, advocates, proctors, attornies, and solicitors as may be necessary, according to such general rules and qualifications as the said Court shall, for that purpose, make and establish: Provided always that the persons so admitted shall be admitted for a period of three months only, and shall not be admitted without obvious necessity."

It had now become the fashion for professional men generally, and newly established in Hongkong, to advertize themselves, and in reference to Mr. Goddard the following notice appeared one month after his admission :—

Professional men advertising in Hongkong.

"Mr. Goddard, attorney of Her Majesty's Court of Queen's Bench in England, and an attorney, solicitor, proctor, and notary public of the Supreme Court of Hongkong, may be consulted at his offices, Burd's Buildings, near Magistracy.

Victoria, 13th February, 1845."

Jurisdiction exercised by H. M.'s Consuls.

On the 17th January, the Governor as H. M.'s Plenipotentiary and Superintendent of British Trade, directed the publication of a Circular addressed to H. M.'s Consuls in China with reference to and in connexion with the Consular Ordinance No. 7 of 1844, by which the nature of the jurisdiction conferred upon the Consuls in matters of a criminal nature was further defined, and the manner in which such jurisdiction was to be exercised pointed out. The Ordinance evidently had not been much studied if we may judge by the facts elicited in the Compton appeal case mentioned hereafter, in November of this year.

Ordinance No. 7 of 1844.

Expenditure of Colony.

Parliamentary Vote. Judicial Expenditure.

Up to this period, the expenditure of the Colony had been almost wholly borne by the Home Government, and the following was the amount voted by Parliament in the Estimates for 1845-1846, to defray the expenses connected with the Judicial Department of the island :—

Chief Justice and Law Courts .....£6,602.
Police at Victoria and Chuk-chu .....£6,423.

Chinese prisoners sentenced to death commit suicide.

At the first Criminal Sessions of the Supreme Court for the year, held on the 15th February, 1845, three Chinamen were condemned to death for an aggravated attempt at highway robbery. The sentence was to have been carried out on Wednesday, the 26th February, but on Sunday, the 23rd, the prisoners anticipated their fate by committing suicide in Gaol. It was generally considered a matter for regret that the salutary lesson which the native inhabitants would have received by a public execution was thus lost; much unfavourable public comment upon the possibility of such an event occurring in the Gaol being the result.*

Arrival of Mr. Charles May, Superintendent of Police, with two inspectors.

The much-needed experienced head of the Police, in regard to whose appointment and arrival rumour had often spoken, arrived in the Colony by the *Oriental*, on the 28th February, 1845. This appointment was considered as another step in the right direction, and as a proof of the determination of the Government to place the Police Establishment upon as satisfactory a footing as possible. So far back as May, 1844, the

* As affording insight into the callousness of the Chinese in committing suicide, see an account of the suicide of three prisoners awaiting trial at the Criminal Sessions, and anticipating their fate on a charge of piracy, as related by Mr. Inglis, the Governor of the Gaol—*infrà*, Chap. xxiv.

Chap. III § II.

1845.

Ordinance No. 12 of 1844.

Ordinance regulating the Police Force had been passed. This Ordinance (No. 12 of 1844) provided for the appointment, amongst others, of Superintendents of Police under the immediate orders of the Chief Magistrate of Police, than whom a more experienced official did not then exist. Mr. Charles May, the new Superintendent, with whom also arrived two Inspectors, hereinafter mentioned, had previously belonged to the London Police Establishment. On his assumption of duties, Captain Bruce, of the 18th Royal Irish Regiment, who had been appointed Superintendent on the 1st March, 1844, had to relinquish his duties and return to his Regiment. A tribute of praise was due to the latter for the able manner in which he had discharged his duties. During his short superintendence the most important and beneficial changes had taken place, especially in the organization of the Indian night guard, a body of men who had proved themselves of great value, and to whom in a great degree was to be ascribed that almost complete protection from nocturnal robbers which now prevailed. In effecting these changes he had been ably supported by the Commander of the Forces and the Chief Magistrate. The appointment of Mr. May as Superintendent of Police, and of Mr. Thomas Smithers and Mr. Hugh McGregor as Inspectors, was duly gazetted on the 18th March, 1845, when a Government Notification also appeared stating that, "in consequence of the arrival from England of Mr. May, the Superintendent of Police, all burglaries, robberies, assaults, nuisances, and other matters connected with the duties of the Police, instead of being reported to the Chief Magistrate as heretofore should in future be at once brought to the notice of the Superintendent of Police, at the Central Police Station, near the old Market Place."

Capt. Bruce relinquishes Police duty.

Inspectors Smithers and McGregor.

Extraordinary conduct of Lieutenant Macdonald towards Major Caine, as Sheriff.

The records of February, 1845, disclose the extraordinary conduct of Lieutenant Macdonald, of the 98th Regiment, towards Major Caine, in his capacity of Sheriff and in connexion with a writ of the Supreme Court issued against Lieutenant Macdonald and addressed to the Sheriff for execution. The following are the facts. In July, 1844, a quarrel took place between some soldiers of the 98th Regiment and the European inhabitants of a lane adjacent to the market-place. The soldiers having been severely beaten, it was rumoured the following evening that the men of the 98th Regiment had determined on avenging the injury done to their comrades by attacking the inhabitants of the lane; and, as a precautionary measure, a picquet was ordered out to patrol the town, and prevent any irregularity on the part of the military. Lieutenant Macdonald, who commanded this picquet, unfortunately exceeded his orders and exposed himself to a civil action by entering the house of a man named Robinson,

whom he made a prisoner on suspicion of having been engaged in the fray of the previous night and ultimately took him to the barracks where Robinson alleged he was maltreated by the soldiers. Lieutenant Macdonald stated, in extenuation of his conduct, that he merely took Robinson into custody for the purpose of ascertaining whether he was actually one of the delinquents who had beaten the soldiers the night before, and that he knew nothing of the alleged assault upon him in the barracks.

Action against Lieutenant Macdonald.

On an action being instituted against him in the Supreme Court, Lieutenant Macdonald's plea, to the above effect, was held to be no sufficient justification of his conduct, and the plaintiff obtained $50 damages and costs against him. Lieutenant Macdonald, considering himself aggrieved by this decision, which he fancied was at variance with the Mutiny Act, took no steps for settling the Court's decree, and consequently a writ was issued against him for the amount. It would appear that at the establishment of the Supreme Court, the Sheriff, Major Caine, selected a steady and intelligent soldier attached to the Police Force to act as bailiff, it being almost impossible at the time to obtain a suitable person unconnected with the service. On the 13th February a writ of arrest against Lieutenant Macdonald was delivered to this bailiff, who proceeded to put it into execution. Although the Sheriff's officer was in plain clothes, Lieutenant Macdonald knew him to be a soldier, and unfortunately, losing sight altogether of the man's civil character, ordered a military guard to take him into custody, for what he, Lieutenant Macdonald, deemed disrespectful conduct. The result of this proceeding was an application from the civil authorities to the Major-General Commanding for Lieutenant Macdonald's person; and that officer was accordingly delivered over to the Sheriff in the evening of the 20th February; but, an arrangement having been made for his release, he was liberated next morning. The following day Lieutenant Macdonald wrote an insulting note to the Sheriff, Major Caine, which was understood afterwards to cover an offer to fight Major Caine in a duel. In consequence of this conduct, Lieutenant Macdonald was arraigned before a Court-Martial, on Thursday, the 27th February, for conduct unbecoming the character of an officer and a gentleman in (1) sending a most insulting note to Major Caine, the Sheriff of the Colony, on the 22nd February, seeking thereby to found a personal quarrel with Major Caine upon circumstances of a public nature and wholly connected with the execution of his official duty, and (2) in having sent such note in the face of the General Order of the previous day, in which he, Lieutenant Macdonald, had been severely

Writ issued against him.

Lieutenant Macdonald orders the arrest of the Bailiff by a military guard.

He writes an insulting letter to Major Caine, Sheriff, and offers to fight him in a duel. He is Court-martialled and punished.

Chap. III § II. 1845.

animadverted upon for an unwarrantable resistance to the Civil Authorities, and also in direct opposition to the warning of Captain John Bruce, Assistant Adjutant General, who distinctly advised him of the dangerous and inevitable consequences that would attend such a proceeding. On the 4th March, the Court adjudged Lieutenant Macdonald to be cashiered, but recommended him to merciful consideration as it was probable he had acted under the influence of unrestrainable excitement. After various references from the General Commanding to the Court-Martial, and *vice versâ*, Lieutenant Macdonald's sentence was commuted to severe reprimand and reduction to the bottom of the list of Lieutenants of his Regiment. For delivering the message to Major Caine, Captain Jeffery of the 98th Regiment was afterwards severely reprimanded by the General. In his minute upon the subject, Major-General D'Aguilar concludes as follows :—

Captain Jeffery reprimanded. Major-General D'Aguilar's minute, and on duelling.

"The Major-General abhors duelling ; but while he can make every allowance for that high feeling which renders it worse than death to a British officer to submit to an unprovoked insult without reasonable explanation and redress, he is equally determined to visit with the severest penalties any one under his command who is urged to wanton violence only by vicious propensities or bad passions. And in doing this, he will feel that the second to such a man, who has no sudden impulses to plead of excited anger or irritated feeling, is infinitely the most to blame....."

Rule of Court providing for service of process on military officers by other than a soldier, disallowed.

It was, no doubt, in consequence of Lieutenant Macdonald's case that the Supreme Court passed the Rule of Court of the 1st March, providing for the service and execution of process upon military officers by other than a soldier, but which rule, however, was amongst those disallowed by the Home Government in March, 1847.

Lieutenant Pedder, Harbour-Master and Marine Magistrate, takes leave. Changes in consequence. Mr. S. Fearon. Mr. A. Lena.

It was now announced that Lieutenant Pedder, the Harbour Master and Marine Magistrate, an officer appointed so far back as July, 1841, and who had shown much devotion to duty, would be proceeding home on leave of absence. He accordingly took his departure on the 8th March, 1845, by H. C. *Proserpine*, his duties being shared respectively by Mr. S. Fearon, the Registrar-General, as Marine Magistrate, and Mr. A. Lena, the Assistant Harbour-Master, an Italian gentleman who had previously been in the English merchant service, as acting Harbour Master.

Levée by the Queen. Distinguished officials from China presented.

At a levée held by the Queen on the 12th March, the officials who had distinguished themselves in China and elsewhere had the honour of being presented to Her Majesty, Sir Wm. Parker and Sir Henry Pottinger being amongst the number, the latter being presented by the Earl of Aberdeen on his return from China. At this levée, Mr. Burgass, formerly

Legal Adviser to the local Government, also had the honour of being presented by Sir Henry Pottinger.

'Chuck-chu' and 'Shuckpai-wan' called 'Stanley' and 'Aberdeen.'

According to a general wish that the more important places about Hongkong should be known by some appropriate English name, it was now decided that Chuck-chu, where Mr. Hillier was appointed Assistant Magistrate in May, 1844, should be known by the name of Stanley, and Shuckpai-wan be named Aberdeen. Those places are both important and situated in a populous locality to the south-east and south-west of Victoria, and at a meeting of Council held on the 13th March, the Governor intimated the names by which the places in question would in future be known, and by which they are still known.

Capture of pirates by Mr. Lena.

An important capture of pirates was effected at Kowloon on the 20th March, 1845, by Mr. Lena, the acting Harbour-Master. It would appear that the Kowloon mandarins were aware of their presence and accordingly communicated with the local authorities, who, with the assistance of the mandarins, captured several boats with eighteen men. The whole party were secured while asleep in their boats. They were armed with spears, guns, fire-pots, and other missiles used by pirates when on expeditions. On the return of the party to Hongkong, another piratical boat was captured between Green Island and Hongkong, the men forming the crews of large piratical junks then in the offing and who evidently had been awaiting their opportunity. Needless to say that Mr. Lena came in for his meed of praise in regard to this capture.

Serious attack upon Chinese Police at West Point.

Shops and houses closed.

A serious disturbance, attributed to ill-feeling entertained against the Chinese Police stationed at the west end of Victoria by their brethren, took place on the 25th March, 1845, which necessitated the despatching of a large body of Police, under the Superintendent, to arrest the rioters. The riot had assumed such a serious appearance that the shops and houses in the neighbourhood had to be closed. Thirteen of the rioters were afterwards brought before the Chief Magistrate and sentenced to various terms of imprisonment as well as to flogging, the latter of which punishment had now become of frequent application in the Police Court. In the early days of the Colony, before the establishment of regular Courts of Justice, and while the island was infested with robbers, it may have been necessary to make some severe examples, and the Magistrates in passing the sentences were undoubtedly resorting to an almost unavoidable punishment; now, however, the opinion was gradually gaining ground that there was no occasion for such repeatedly severe sentences of flogging as were being passed, and which were considered injurious to the community as being cruel and unjust towards the Chinese, and as having a tendency to strengthen

Flogging of prisoners.

Public opinion.

Chap. III § II. 1845.

those feelings of dislike which had been engendered in the native mind.

**Prostitutes, and charges of extortion against Police.**

Serious charges against the Police were formulated in March with reference to certain contributions which, it was said, they levied from prostitutes, and the Chief Magistrate was now diligently inquiring into the truth of these. An attempt had been made by the Government, in April, 1844, to rid the Colony of these women, but they eventually found their way back. A system of police surveillance was then matured, and a lock hospital, supported by voluntary contributions from the women and governed by officers appointed by themselves, immediately brought into operation. It would appear that the accounts of this hospital had been submitted to and inspected by the Chief Magistrate, and this voluntary work of his, done evidently with a praiseworthy object, now induced some evil-disposed person to incriminate him with the Police, it being reported that the latter had acted under his orders and that the moneys appropriated by him. Naturally indignant at such a suggestion, Major Caine deemed it imperative that the origin of the rumour should be traced to its very source, and eventually, through his friends, he discovered that the gross calumny had been uttered by Mr. Shortrede, the editor of a local paper, called the *China Mail*. Affidavits contradictory of and in support of the statement soon appeared in rapid succession; but, be is said to his credit, Major Caine seems to have treated the matter with the contempt it deserved, for nothing seems to have come of it, nothing being discoverable in the records, except profuse apologies and denials on the part of the editor as to the dishonourable conduct imputed to him, and the refusal on the part of Major Caine, after such a misconception of facts as is mentioned above, to take any further trouble with regard to the institution under consideration. As will be seen hereafter, the matter of these 'contributions' came up before the Select Committee of the House of Commons, in March, 1847.*

**The Lock Hospital and the Chief Magistrate.**

**Major Caine slandered.**

**Mr. Shortrede, editor of the *China Mail*.**

**Apology to Major Caine.**

**Constitution of Legislative Council again discussed.**

The constitution of the Legislative Council, which had formerly been unfavourably commented upon, again formed the topic of discussion and complaint. It was not considered possible that with the advance which Hongkong had made, even at this early period, the Legislative Council would continue long composed as it was. Though a popular elective Legislature was out of the question, an assembly having some control over the Executive was considered necessary. A Home correspondent of a local paper, contrasting the Legislative Council of South Australia with that of Hongkong, said that the one here was a misnomer—"an absurdity"—as it was composed entirely of officials. It was not

* *See* Chap. VI., *infrà*.

legislative. The Governor determined upon certain measures and an Ordinance was drawn up; it was then published and became law. There was no vote upon the subject, no discussion; the members of the Council were only privileged to give an opinion, and they could offer no opposition. The writer, who apparently was somebody who knew what he was writing about, ended by saying that "such a Council may suit the Pacha of Egypt, but in a British Colony it was shameful."* As will be seen hereafter, it was only in June, 1850, that unofficial members were first admitted into the Legislative Council.† The Supreme Court, which had been opened since October of the previous year, had given great satisfaction, and the Chief Justice at a recent Criminal Sessions was reported as looking tired. He laboured under great disadvantages and had no other Judge to consult with upon difficult points of law, or who could relieve him occasionally of some of his work, for his duties were by no means light. Under the Supreme Court Ordinance, No. 15 of 1844, sections 25 and 27, he held four distinct terms of Court annually for the despatch of the civil and criminal business, and also held occasionally a small debt Court for the despatch of business on the summary side of the Court. The latter Court was considered a cheap and equitable tribunal, and petty cases were said to be settled "at once and for a mere trifle." The "Summary Jurisdiction" side of the Court was further improved upon in August, by the passing of Ordinance No. 9 of 1845. It had now become the practice to notify the day on which the Court would sit on its summary side.

When unofficial members first admitted to the Legislative Council.

The Supreme Court and the Chief Justice.

Ordinance No. 15 of 1844, ss. 25, 27.

Ordinance No. 9 of 1845.

The following reference to the Supreme Court at this stage will be found interesting. The introduction of Chinese advocates and of the Chinese language, as well as the appointment of educated Chinese in the administration of justice in Hong-kong, found its advocates at this early period in the history of the Colony, and, as will be seen, the all-important subject of correct interpretation found its place also in the following extract from a paper of the time dealing with those questions:—

Chinese Advocates and the employment of educated Chinese in the administration of justice.

Chinese interpretation.

"Regarding the Supreme Court we hardly dare hazard any opinion. Its leading members are able men, and have shown themselves worthy of the trust reposed in them. As friends of the Chinese, we should like to see this Court provided with its learned *Chinese* advocates. We have occasionally attended its sessions, when Chinese have been at the bar; and we have there supposed the case reversed, and the Chinese made the language of the Court, and the ablest sons of Han administering justice, and the foreigner seeking redress or labouring to make defence. Would the foreigner in that case be satisfied? Great care should be taken, in giving testimony, especially where life is concerned, that every word be *faithfully translated*; otherwise how can judge and jury decide rightly."‡

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* On this subject, see also *The Chinese Repository*, Vol. XIV., 1845, p. 297.

† See Chap. XI. and XII., *infrà*.

‡ See *The Chinese Repository*, Vol. XIV., 1845, p. 297.

Chap. III § II. 1845.

A number of Chinese barristers and solicitors, admitted in England, have joined the local bar from time to time within recent years, sufficient to meet all local requirements, and so also has the magisterial bench been occupied by one gentleman at least of Chinese nationality, but the question of interpretation, it is feared, is one that will always occasionally crop up.

**Resignation of Mr. Farncomb, as Coroner.**

Though the Supreme Court was now working satisfactorily, an official connected with a different Court had reason to be dissatisfied with his position, for the records show that Mr. Farncomb, the Coroner, who had succeeded Mr. Fearon in that office in September, 1842, resigned his appointment in April, 1845. He had, it would appear, received the temporary appointment at his own solicitation, the question of remuneration being left open pending instructions from the Home Government. On the arrival of Governor Davis, Mr. Farncomb took an early opportunity of addressing him regarding his office, and was informed that on the arrival of Mr. Sterling, the Attorney-General, matters would be definitely arranged. Accordingly, on the 27th March, Mr. Farncomb received a letter from the Colonial Secretary informing him that the Government had determined to allow him five dollars for each inquest, "provided the proceedings were copied out and lodged with the Chief Magistrate." To this Mr. Farncomb declined to conform, and, it is said, "threw up his office in disgust." He complained that, apart from the clerical duties which were now required of him, he had to "furnish his own stationery, printed forms," besides other items which he mentioned but which are now of no interest; at least, added Mr. Farncomb, if Government "would not pay for his valuable time, they might reimburse his actual outlay." On the 9th of April, Mr. C. B. Hillier was gazetted as his successor.

**The reason.**

**Mr. Hillier succeeds Mr. Farncomb.**

**April Criminal Sessions.**

The April Criminal Sessions commenced on Tuesday, the 15th of that month. The calendar was not very heavy, containing only six cases, none of them of a serious nature. At this session Mr. Shelley, Clerk of Councils, acted as Hindustani Interpreter, and Mr. D. R. Caldwell, as Chinese Interpreter.* Mr. McSwyney, having resigned his appointment of Deputy Registrar of the Supreme Court, advertized on the 1st May, as practitioners were wont to do at this time, that he had been admitted to practise as "barrister-at-law, attorney, solicitor, proctor, and notary public, and could be

**Mr. Shelley acts as Hindustani interpreter.**

**Mr. D. R. Caldwell, Chinese interpreter.**

**Mr. McSwyney, Deputy Registrar, resigns to practise.**

* As Mr. Caldwell's career forms, as will be seen hereafter, a very important factor in connexion with the judicial history of the Colony, it is expedient here to note that he was born in St. Helena, and was employed in various mercantile firms in Singapore, Hongkong, and Canton. Subsequently, he returned to Singapore where he joined the Commissariat Department, coming afterwards with Major Caine in June, 1840, in the same fleet, from Singapore to Chusan. In 1843, on the recommendation of Major Caine, he joined the Colonial Service as interpreter to the Chief Magistrate (Major Caine).

consulted at his offices, corner of Wellington and Cochrane Streets." His was the fourth admission to the Supreme Court to practise, and as Deputy Registrar, he was succeeded by Mr. Frederick Smith, Clerk of the Court.

1845. Mr. F. Smith succeeds Mr. McSwyney.

On the occasion of the Queen's Birthday, nineteen prisoners (corresponding with Her Majesty's age) confined in the Gaol for minor offences, or who during a long period of imprisonment had been reported as well-conducted, received a free pardon.

Free pardon to prisoners on Queen's Birthday.

An important case was heard by the Supreme Court on the 2nd June, a special jury being empanelled for the trial of an action brought against Mr. John Carr, the editor of the local newspaper, *The Friend of China*, for publishing an article in an issue dated as far back as the 13th July, 1844, alleged to contain a libel against Rear-Admiral Sir Thomas Cochrane. The Attorney-General appeared for the plaintiff and Mr. Goddard for the defendant. For certain services rendered by a schooner called the *Vixen* to H.M.S. *Wolf*, and for which the Admiral awarded to the former ship $100 as full and sufficient salvage, the defendant took occasion to vilify the Commander-in-Chief, stating he had acted arbitrarily, haughtily, and unjustly in that no adequate reward would be paid for services rendered to Her Majesty's ships. For the defence, it was contended that nothing that the defendant had said implied guilt on the part of the Admiral and that, in fact, defendant had merely accused the Admiral "of not being so liberal as he might have been." The Attorney-General replied, and, after the Chief Justice had summed up, the jury, after a short consultation, returned a verdict of not guilty. The action of the Government in this matter was disapproved of and certain members of the community, to mark their disapprobation of the Admiral's conduct and of the support he had received from the Government, defrayed the defendant's expenses by common subscription. Although the alleged libel had been published nearly a year before, there can be no doubt that the action of the Government in this matter was hastened by the conduct of another editor of a newspaper in connexion with the abominable stories affecting the Honourable Major Caine's character.

Admiral Cochrane's action against the editor of the *Friend of China*, Mr. Carr, for libel. Mr. Carr is acquitted.

Action of the Government in the matter disapproved of.

Mr. Carr's expenses defrayed by subscription.

The records show another important case tried in the Supreme Court also in June, but different in character to the previous one mentioned. It was an action tried on the 13th June before the Chief Justice, the plaintiffs being Messrs. D. & M. Rustomjee & Co., against Messrs. Macvicar & Co. The plaintiffs were represented by Mr. Sterling, the Attorney-General, and the defendants by Mr. Goddard. The action was brought to recover the amount of insurance on goods damaged on board the *Corsair* on her passage from Hongkong to Woosung. The defence was, that the vessel was not to have sailed

Rustomjee and Co. v. Macvicar and Co.

Chap. III § II. 1845.

from Hongkong. After a great deal of evidence had been adduced, the jury found a verdict for the plaintiffs, thus establishing that the vessel was trustworthy. No point of law turned upon the case.

June Criminal Sessions.

The Criminal Sessions closed on Thursday, the 19th June, having occupied the Court four days only, though there were fourteen cases upon the Calendar, some being of importance.

Conviction of Private McHugh for causing death of a comrade. Henry Daniel Sinclair transported for life for piracy. Chun Afoon sentenced to death for a murderous attack at East Point. Decrease of such crimes.

Private McHugh, of the 18th Royal Irish Regiment, was sentenced to a term of imprisonment for causing the death of Private Higgins of the same Regiment, and Henry Daniel Sinclair, gunner of the schooner *Ariel*, for piracy, was sentenced to transportation for life. At the same session Chun Afoon was sentenced to death for shooting, with intent to murder, during an attack at East Point on the 7th May. Though similar attacks had been numerous and many of the assailants killed or wounded, this was the first case in which one of the robbers had been actually captured at the time of committing the offence, and it was hoped his fate would be a salutary warning to his confederates. It was gratifying to notice the decrease of crimes of this nature, and undoubtedly the security now existing in the Colony was to be ascribed to the efficient body of night Police organized during the past year. At the Criminal Sessions held on the 30th June, a ghastly case was heard. It was that of three men belonging to H.M.S. *Driver*, named Charles Ingwood, Thomas Cox, and John Mears, who were arraigned upon the charge of having murdered an Englishman of the name of Wilkinson, on Friday, the 2nd May, 1845, at Whampoa. The prisoners and deceased, a baker in the employ of a Mr. James McMurray, at Whampoa Roads, had met on shore. After drinking together, they all came off in a Chinese sampan, when, some angry words passing between them, it was alleged the prisoners set upon Wilkinson, tied up his hands and feet, and threw him overboard, the body being picked up afterwards at Whampoa Reach on the 5th May, in a state of decomposition. The Chief Justice presided at the trial, Mr. Sterling, the Attorney-General, prosecuted, and Mr. Goddard appeared for the defence. From the evidence it would appear that the prisoners were at the time under the influence of drink, but "sober enough to know what they were doing." Originally four men had been charged, but Joseph Charlow, a shipmate, with a promise of pardon held out to him, turned Queen's evidence. It was proved that Wilkinson, the deceased, had been very abusive to Ingwood,—Cox and Mears at this time, sitting aft and being mere spectators of the awful drama that was being perpetrated, though offering no assistance whatever to the deceased. In the result Ingwood was found guilty and sentenced to death, the jury acquitting Cox and Mears. It was

Conviction of Ingwood, of H.M.S. *Driver*, for murder.

hoped in some quarters that the Governor would extend to the condemned man the mercy which, as Her Majesty's representative, he was entrusted with, and the community thus spared the dreadful sight of an Englishman being hanged in Hongkong, but the unfortunate man was hanged on Thursday, the 3rd July, 1845. He had been attended by the Colonial Chaplain, the Reverend Vincent John Stanton, who after the execution said that "he had visited Ingwood often during his imprisonment, and was fully convinced that he was not a hardened offender, and could not have been guilty of premeditated murder, but had been maddened by provocation and liquor." To a shipmate, Ingwood said he wished to warn his shipmates against "samshoo" (a native intoxicating drink), and he hoped his fate would make an impression upon them which would not be effaced. The wretched man had been doomed to the further indignity * of suffering in company with the Chinaman Chun Afoon, who, it will be remembered, was sentenced to death on the 18th June, and who had since been, with less success, however, than his three countrymen under similar circumstances in February, using every effort to save the offices of the hangman.† The double execution took place at five o'clock in the morning, on a gallows erected at West Point, the Chinaman having been received into the bosom of the Roman Catholic Church and attended to by an Italian priest. The execution of Ingwood, until this time, was the only recorded instance of a European being hanged in Hongkong. In the annals of crime instances of more refined cruelty and fiendish malice are occasionally met with, but it would be difficult to point to a more cold-blooded, deliberate, cowardly murder than the one for which Ingwood was so righteously sentenced to death. The ermine of Justice is now less stained with blood than formerly, but as the law of England still contains murder among capital offences, no commutation of the penalty can reasonably be looked for except in cases presenting strongly extenuating circumstances, or where facts brought out subsequent to the trial cast a doubt upon the evidence; but in cases like Ingwood's, it is difficult to see why, if mercy had been extended to him, Chun Afoon, who was not even charged with committing murder, but only with intending to do so, could have been hanged without this being regarded as a judicial murder.

Execution of Ingwood.

Ingwood is hanged together with Chun Afoon.

Ingwood the first European hanged in Hongkong.

Ingwood's crime.

The law of England as to murder.

The Ordinance to raise an assessed rate on lands and houses for the purpose of upholding and maintaining the Police Force (No. 2 of 1845), came into operation on the 1st July, 1845. The opinion of the law officers of the Crown was that the

Assessed rate on lands and houses for maintenance of Police Force.

* See the action of the Government after the execution of the two Englishmen Gibbons and Jones, as related in Chap. XXVI., *infrà*.

† See *antè* p. 75.

Chap. III § II. 1845.

assessment provided for was a direct tax upon property by the landlord, and not by the tenant, but the terms of the Ordinance were rather ambiguous and it was not clear whether the tenant or landlord was the party responsible. This Ordinance was not without giving cause for dissatisfaction, as indeed, do most laws having taxation for an object. The measure was considered unconstitutional and illegal, as empowering Government assessors arbitrarily to value all household property with the view of raising a new tax, ostensibly, it was said, for payment of a Police Force, "there being no municipal body of any kind in the Colony to determine whether such tax be necessary or equitably levied and appropriated." The rate was primarily payable by the tenant, though as regards the public it was ultimately a charge on the landlord; but in cases, for instance, where the agreement for occupancy had been made by a military officer, the landlord might be applied to, in the first instance, for the assessment. It was clear therefore that the assessment was a direct property tax, and for this (considered) special legislation, the constitution of the Legislature was again attacked. It was admitted to be unreasonable to ask for an elective Council, but it was urged that the inhabitants were entitled to representation, so far as it could be obtained by the nomination of representatives by the Crown. A memorial to Lord Stanley, protesting against the measure, was accordingly got up on the 13th August, and forwarded to the Governor for transmission to the Secretary of State.

Ordinance No. 2 of 1845.

The opinion of the Law Officers of the Crown.

Landlord and tenant.

Public dissatisfaction.

Constitution of Legislature attacked.

Memorial to Lord Stanley.

Consequent upon the departure on short leave, of Mr. Bruce, the Colonial Secretary, on the 16th July, 1845, important changes took place in the establishment of the island. Major Caine, who was appointed to replace Mr. Bruce, being succeeded by Mr. Hillier as acting Sheriff and Police Magistrate, Lieutenant Armstrong, of the 18th Royal Irish Regiment, replacing Mr. Hillier as assistant Magistrate. But all these changes were only of short duration, for Mr. Bruce returned to the Colony and resumed the duties of his office, on the 25th October, 1845. Mr. Samuel Fearon, the Registrar-General, however, took a year's leave on the 16th July, when Mr. Andrew Lysaught Inglis, clerk in the Marine Magistrate's Office was appointed to act as Registrar-General, Mr. Hillier performing the duties of Marine Magistrate, Mr. W. H. Leggett, clerk to the Chief Justice and to the Supreme Court, with the concurrence of the Chief Justice, being appointed Coroner, vice Mr. Hillier.

Mr. Bruce, Colonial Secretary, goes on leave.

Major Caine, Acting Colonial Secretary, Mr. Hillier, Acting Sheriff and Police Magistrate; Lieutenant Armstrong, acting Assistant Magistrate.

Mr. S. Fearon, Registrar-General goes on leave.

Changes.

Mr. A. L. Inglis.

Mr. Hillier.

Mr. W. H. Leggett.

Major-General D'Aguilar causes prosecution and conviction

Major-General D'Aguilar now again came in for public comment. It will be recollected that the stopping of the bamboo-beating nuisance was ascribed to him. He was now accused of causing the conviction of a Mr. Welch for "having singing in his house between the hours of 10 and 11

o'clock." It was said that "Mr. Welch had the misfortune to occupy a house near that in the temporary occupation of the Honourable Major-General D'Aguilar, to whose gentle ear the rude sound of civilian hilarity was peculiarly obnoxious, though he could complacently listen to the mirth of the military mess in the rear of his house on their evenings of entertainment." According to the report, the General had sent for Sergeant Atkins (formerly of the 18th Royal Irish Regiment) and had ordered him to go to Mr. Welch's house with his, the General's, compliments, and request him to stop the noise. Sergeant Atkins, in company with Constable Isaac Simmers (formerly a private in the Royal Irish Regiment) accordingly proceeded to Mr. Welch's house and found his way to the room where Mr. Welch had a party of friends, and in an insolent manner informed Mr. Welch that General D'Aguilar ordered that the noise be stopped at once. Mr. Welch then quietly told the Police sergeant to go downstairs, and, on second thoughts, "feeling the indignity cast upon him" by the intrusion of policemen in his house, opened the window and, calling out to the sergeant, told him that if he came again with such a message, he would horse-whip him. The next act in the farce, continued the report now condensed, was the appearance the next day of Sergeant Atkins before Lieutenant Armstrong, "of the Royal Irish Regiment" (who was acting as Assistant Magistrate in the place of Mr. Hillier, temporarily promoted Chief Magistrate) and who, swearing to an information containing the threat of horse-whipping above-mentioned should he return to Mr. Welch's house, summoned Mr. Welch accordingly before the Magistrate to answer to the charge. On the 13th September, the Magistrate, Lieutenant Armstrong, sentenced Mr. Welch "to pay a fine of $20 to the Queen." Useless to say that the charge and sentence were both considered iniquitous, and the attention of the Attorney-General and the public called to the unjust sentence of the "servile Magistracy," but, as in the case of the bamboo-beating, the records do not show that, after this, Mr. Welch ever had any more "singing" in his house.

**Case of a Mr. Welch for having 'music' in his house. Episodes in the case.**

**How Mr. Welch treated General D'Aguilar's emissary.**

**He is prosecuted. Case tried by Lieutenant Armstrong. Mr. Welch fined for 'threatening' Sergeant Atkins.**

**Public comments on the whole matter.**

The news that a baronetcy had been conferred upon the Governor reached the Colony on the 14th September, 1845, and the honour was considered a well-deserved one and for which Sir John Davis was well worthy. The following is a copy of the announcement as it appeared in the *London Gazette*, of the 11th July, 1845:—

**Governor Davis made a Baronet.**

> "The Queen has been pleased to direct Letters Patent to be passed under the Great Seal, granting the dignity of Baronet of the United Kingdom of Great Britain and Ireland unto John Francis Davis, Esquire, Governor of Hongkong, and the heirs male of his body lawfully begotten."

Chap. III § II.

1845.

Mr. Hillier, acting Sheriff, refuses access to prisoners in debtor's gaol.

On the 23rd September, Mr. Hillier, the acting Chief Magistrate and Sheriff having charge of the Gaol, refused access, without a written order from himself, to several Europeans confined in the Debtor's Jail. His conduct was considered inexcusable, and regretted because the impression heretofore had been, that "he was not infected with those harsh feelings which were so peculiarly characteristic of the Executive of Hongkong." The prisoners complained they were being detained as felons, and from the correspondence that ensued afterwards between the Government and themselves, it does not appear that they gained any advantage by their action.

Comparison between Hongkong and Chusan. *The Bombay Gentleman's Gazette.* Early History of Hongkong. Lawless population.

*The Bombay Gentleman's Gazette*, of 1st October, 1845, contained an article drawing a comparison between Hongkong and Chusan which it was desired to see retained, the comparison being anything but favourable to the former. The following extract is, however, given as containing an account of the early history of the Colony and showing the lawless population which the authorities had so early to cope with, and for the success of whose measures no small praise or credit was due :—

"As to the population and progress of Hongkong, the only known facts are, that in January, 1841, it was ceded to Captain Elliot, and great offers were made by him and Commodore Sir Gordon Bremer to induce settlers to go there. The floating population on its being taken, was about 7,800 smugglers, stone-cutters and vagabonds ; in March, 1842, it rose to 12,360 ; in July, 1845, it was about 19,000, but of the worst characters from the neighbouring coast of China, for not one respectable Chinaman had come to settle there during the 3½ years of British occupation. The mandarins of the next provinces order their outlaws to Hongkong, and such was the frightful state of society in the island, that in that small population, there were, in June last, 20 opium eating shops, 31 brothels, etc., etc. The Europeans, who dwell there, sleep with pistols under their pillows, for their lives or property cannot be considered safe either by day or by night. The true character of this Colony was clearly described by anticipation in the *Canton Register* of the 23rd February, 1841, in which it is called "a Gehenna." The lawless population refuse to be controlled,* and the proclamation of the Police Superintendent, Major Caine, was met by a counter-edict by the leaders of the determined scoundrels, who look upon the British settlers as their prey, to be plundered and butchered whenever opportunities offer....."

The foregoing picture though dark, having regard to the facts before touched upon regarding the early condition of affairs here and the people that had settled in Hongkong, cannot be said to be overdrawn, or, if exaggerated, certainly not untruthful, and it must have been a matter for congratulation to the authorities to see their untiring efforts rewarded, and to the residents, to see how much crime was being stamped out

* Doubtless reference is here made to the riots in connexion with the Registration Ordinance, in October, 1844, *antè* pp. 66-68.

through the admirable exertions of those very authorities whom they often, but unnecessarily, abused.

Mr. Holdforth, Coroner. Death of Mr. Leggett.

On the 6th October, Mr. Charles Gordon Holdforth was appointed Coroner, pending the receipt of Her Majesty's pleasure. This was doubtless in succession to Mr. W. H. Leggett, appointed in July last vice Mr. Hillier, and who had died at Macao on the 23rd September, 1845. Pending Mr. Holdforth's appointment, after Mr. Leggett's death, Mr. Hillier had resumed the office temporarily.

Chinese Agents violate sovereignty of Hongkong. They are convicted. Government Notification as to such Agents. Ordinance No. 11 of 1845. Ordinance No. 19 of 1844. Ordinance No. 10 of 1845. Act 10 and 11 Vict., c. 83.

Two inferior agents of the Chinese Government, having violated the sovereignty of British law by coming over to Hongkong and apprehending a suspected Chinese without the authority of a warrant from the Police Magistrate, were condemned, on the 15th October, to one month's imprisonment. A notification from the Government enjoined all inhabitants to apprehend any such persons in future and to bring them before the Magistrate for punishment. Ordinance No. 11 of 1845, regulating the harbour of Hongkong, passed the Legislative Council during this month. The Ordinance repealed Ordinance No. 19 of 1844 under which some previous regulations had been passed, but which were now rescinded and embodied in the above Ordinance. The Ordinance for the naturalization of aliens (No. 10 of 1845) passed in October also, was disallowed by proclamation of the 1st January, 1848, followed by the publication of the Act 10 and 11 Vict., c. 83, relating to the same subject.

First Appeal Case against Magistrate's decision: Christopher *v.* Armstrong. Ordinance No. 11 of 1844. Rule made absolute. Costs refused against the Magistrate. Mr. Hillier takes short leave. Lieutenant Armstrong acts. Mr. A. L. Inglis, Assistant Magistrate.

The first appeal case against a Magistrate's decision was heard on the 3rd November of this year. Mr. McSwyney moved on behalf of the appellant in the case of Christopher *v.* Armstrong, for a writ of mandamus calling upon Messrs. Caine and Hillier, Justices of the Peace, to show cause why they should not assemble a Court of General Sessions to re-hear the above case, and wherein the Magistrate, Lieutenant Armstrong, had fined the appellant $100 for a contravention of the Spirituous Liquors Ordinance, No. 11 of 1844. The Justices not appearing, the rule was made absolute on the 10th November, but the Chief Justice refused costs, as it was not usual "to grant costs against Magistrates."

On the 12th November, Mr. Hillier, the Assistant Magistrate, proceeded on six weeks leave of absence, being replaced by Lieutenant Armstrong, who had previously held the position, on the 10th December, Mr. Andrew Lysaught Inglis, acting Registrar-General, was appointed at the same time an Assistant Police Magistrate for the Colony.

December Criminal

The last Criminal Sessions of the Supreme Court for the year, opened on Monday, the 15th December, and closed on Friday, the

Chap. III § II. 1845. Sessions. Trivial cases committed by the Magistrate. A Chinaman sentenced to death. His accomplice is arrested in 1848 and convicted.

19th. The calendar had been a heavy one, and with three or four exceptions, the offences were trifling and might well have been settled by the Magistrate without occupying the time of the Court and of the Jury unnecessarily, a number of cases ending in an acquittal. Most of the prisoners found guilty of robbery were sentenced to long terms of transportation. In one case, a Chinaman, charged with murder, was sentenced to death. His accomplice, who had escaped to Canton, was afterwards arrested in the Colony at the end of 1848, and tried, convicted, and executed in December of that year.

Judicial events of 1845. Resumé.

The judicial history of the Colony during 1845 presented few prominent points of interest. Several important Rules of Court passed during the year (notably those of the 1st November, which related to the sittings of the Court, practice and pleadings, proceedings in formâ pauperis, criminal proceedings and fees of Court) were all disallowed by the Home Government, notification to that effect appearing in March, 1847.

Despite occasional complaints at the measures of Government, matters rolled on in comparative tranquillity. The Police Assessment Ordinance drew forth a deal of discussion, ending in a memorial to Lord Stanley. To this memorial at the end of the year no reply had been received, but its import might have been inferred from the fact of a proclamation published on the 26th December, announcing that the Ordinance had been approved of and confirmed by Her Majesty. The other legislative measures were chiefly confined to amending former Ordinances so as to render them more adapted to existing circumstances. Disapproval of the wholesale manner in which the Magistrates inflicted corporal punishment upon the Chinese began to make itself heard, trifling offences in many instances involving a sentence of from 50 to 100 strokes of the rattan. Though some of the sentences passed during the year in the Courts might have appeared severe, in the then condition of the Colony, severity was certainly called for, and indeed, if not paradoxical, it became humanity.

Ch. III § III. 1846. Coroner's Inquest. Suicide amongst Chinese.

A Coroner's inquest was held on Friday, the 2nd January, 1846, on the body of the Chinese contractor for the military hospital and officers' barracks. The deceased was found hanging by the neck in the morning at his residence near the barracks. Upon his person was found a paper stating that, in consequence of his not being able to meet his obligations at the end of the year, he had destroyed himself, and also that he had lost considerably by the contract for the officers' barracks in consequence of his being obliged to build a stone front, "the contract having been for a brick one." The jury, curiously enough, returned a verdict of temporary insanity, though

upon what grounds could not be imagined, as the suicide appeared to have been most deliberate, and it is a well known fact that suicide is common among the Chinese, males or females, whenever in trouble. Needless to say, of course, that the charge relative to the alteration of the terms of the contract was found afterwards to be untrue. Ch. III. § 1846.

Piratical attacks had now begun afresh, and it was believed that the pirates had made Hongkong their abode, in consequence of which the Police, of course, came in for censure. It was said that there were 300 Chinese of notoriously bad character resident in the Chinese part of the town and suburbs, and that so long as they were permitted to remain on the island, robbery and violence would continue. The Indian night Police came in for a meed of praise, and the lighting of the streets was favourably commented upon, but the European Police apparently did not stand high in the estimation of the residents. Their frequent visits to and lounging about in the Chinamen's shops, had not escaped observation. Several important appointments were made during this month, amongst others, those of several of the principal officials and residents to be Justices of the Peace for the Colony. On the 29th January, Mr. Adolphus Edward Shelley, the Auditor-General, was appointed to audit the accounts of the Registrar, Mr. Cay, on the ecclesiastical side of the Court, Mr. Charles Markwick being also appointed 'one of the appraisers and auctioneer' on the same side of the Supreme Court, in place of Mr. Edward Newman who had hitherto held the appointment. *The London Gazette* of January 30, announced that Her Majesty had been pleased to appoint Mr. Samuel Turner Fearon, the Registrar-General, (who had proceeded on leave on the 16th July, 1845), to be 'Registrar-General and Collector of Chinese Revenue' for Hongkong.

Piracy.

The Police.

The Indian night Police.

Lighting of the streets.

Public opinion of European portion of Police Force.

Justices of the Peace.

Mr. Shelley audits the Registrar's accounts.

Mr. C. Markwick, Appraiser and Auctioneer of the Court, in place of Mr. Newman.

Mr. S. T. Fearon gazetted Registrar-General and Collector of Chinese Revenue for Hongkong.

In January, also, Government permission was given for the construction of verandahs projecting beyond the boundaries of lots over any public road or street within the City of Victoria, in accordance with a plan, open for inspection at the Surveyor-General's Office. This permission superseded the Government Notification of 19th November, 1844. No provision has ever been made in the Crown Lease for these erections which are, to this time, allowed by the licence of the Director of Public Works. The consequence is, that the purchaser of a house, in hundreds of cases, acquires no other title or estate in the exterior parts of the building he purchases, than what passes by his deed of assignment as an easement, if such an easement attached to his holding, which, under the Governor's instructions for the disposal of land, appears to be somewhat doubtful.

Land.

Verandahs.

Ch. III § III. 1846.

In February, Mr. Holdforth, the Coroner, received the appointment of Deputy Sheriff, Major Caine retaining the sheriffship, and on the 23rd March, Lieutenant Pedder, the Harbour-Master and Marine Magistrate, who had proceeded on leave of absence in March, 1845, resumed the duties of his office.

Mr. Holdforth, Deputy Sheriff. Return of Lieutenant Pedder.

Messrs. Farncomb and Goddard, solicitors, advertised on the 21st March, 1846, that they had formed a partnership as "attorneys, solicitors, proctors, and notaries at Victoria, under the firm of Farncomb and Goddard," and that Mr. Farncomb would transact the business of the firm as notary public. But this partnership apparently was not of long duration, for on the 4th July it was announced that the partnership heretofore subsisting between them had that day been dissolved "by mutual consent."

Messrs. Farncomb and Goddard in partnership.

Flogging in Hongkong.

The frequency of the application of corporal punishment mentioned in March, 1845, and the injurious effects of unnecessary severity were now beginning to tell upon the public mind. Disgusting exhibitions of public flogging were reported to be of almost daily occurrence in the town: in one case about an hour before sunset one afternoon, in the Queen's Road, between the foot of Pottinger and Cochrane Streets, one poor wretch being tied up to the door-post of a public house next to the then temporary Police Station there, and afterwards stripped and his back "lacerated with the rattan." No pretension was made to an over-refinement of feeling, but the wholesale system of flogging inflicted by the Magistrates was objected to. The extent to which the rattan was made use of was said to be almost incredible, and that the records of the Police Court, on examination, would show that there was more flogging in Hongkong than probably in any country in the world according to the population. For the most trifling offences the Chinese were being daily sentenced to be publicly whipped. On Saturday, the 25th of April, 1846, no less than 54 men were flogged and had their tails cut off,—a mode of punishment common in those days—for no other reason than that of being on the island without registration tickets, and the severity of the sentence was further increased by their being handed over afterwards to the tender mercies of the Kowloon mandarins to be sent back to the places to which they belonged. The existence of any local law authorizing the Magistrates first to punish and then to hand over delinquents to the Chinese authorities was not known. By the treaty, criminals or other offenders were only to be handed over on application. The origin of the offence for which the 54 men were flogged happened in this wise: a policeman saw a Chinaman carrying a piece of timber which he believed had been stolen, and arrested the man. On the policeman and

Disgusting exhibitions of flogging.

Wholesale flogging objected to.

54 Chinese flogged and their 'tails' cut off on pretext of having no registration ticket. They are afterwards handed over to mandarins at Kowloon.

The origin of the offence for which they were flogged.

his prisoner passing near some native houses near Spring Gardens, some Chinamen threw stones and the policeman was obliged to abandon his captive, though afterwards, meeting with assistance, he was able to re-capture him. A strong body of police was sent down, but as it was found impossible to identify the offenders, they arrested such of the men as were without tickets of registration, and they, together with the thief, were next day brought up before the Police Court. Against the latter the charge was clearly proved, and the rest were tried under the Registration Ordinance and sentenced to pay a fine of $5 each or, in default, to receive each 20 strokes with the rattan and "to lose their tails." As they failed to pay the fine, the alternative of the sentence was enforced, and they were afterwards forwarded, as before stated, to the mandarin at Kowloon with a letter stating that they had been punished and requesting that he would order them "to their native districts and forbid them to return." As is apparent, the difficulty of identification alone had rendered it necessary to proceed against the men under the Registration Ordinance, though the offence, for which some of them at least had been guilty, was assault with intent to intimidate the police, but to meet which the authorities deemed it advisable to charge the 54 men as above. As will be seen later on, this case came before Parliament in August.

Difficulty of identification.

Case brought before Parliament.

The Registration Ordinance, as worked, was reported a failure, though possibly it might eventually prove beneficial to the Colony, but only by being worked differently. So long as it was made an apology for severities such as were described, it was injurious rather than beneficial, and so long as it permitted the Magistrates to surrender men to their brother-magistrates, of the Celestial Empire, it was a disgrace to the Colony and gave rise to the most unpleasant suspicions. Between English Magistrates and those of China there should be no community of feeling, no negotiations, except such as were provided for by treaty. Commenting upon the case, a local paper said that "the barbarity of the Police Court was of a piece with the brutality of the legislation which would brand and mutilate human beings who had committed no crime, but who were obnoxious as being members of a secret society," reference being doubtless had to the Triad and other secret Societies Ordinance, No. 1 of 1845.

Registration Ordinance a failure.

The surrender of men under the Ordinance to Chinese authorities deemed a disgrace.

No community of feeling between English and Chinese Magistrates.

Strong local comments upon the flogging case.

Ordinance No. 1 of 1845.

The spirit was observable on the bench which rendered the Council "contemptible." But be this as it may, there was no doubt that crime had greatly diminished, to whatever cause due, though perhaps severity was now less called for. Seldom was a robbery of any magnitude now heard of, nor did the natives show any disposition to be insubordinate.

State of crime at this stage.

Ch. III § III. 1846.

At the last session of the Supreme Court there was scarcely one case of importance, whereas formerly there were a dozen. This was certainly satisfactory as showing that the population was more orderly and that sentences of whipping inflicted by the Magistrates, and which had now begun to be objected to as partly excessive and partly unnecessary, had at least had some salutary effect. Lieutenant Thomas Wade, of Her Majesty's 98th Regiment, having been placed at the disposal of Government by the Major-General Commanding, the Governor, on the 6th April, appointed him to the office of Interpreter to the Supreme Court, pending Her Majesty's pleasure. It will be remembered that Mr. Wade was appointed in a similar capacity to Her Majesty's land forces in July, 1843. On the 15th April, notice was given, that for the future Lieutenant Pedder, the Harbour-Master and Marine Magistrate, recently returned from leave, would only take cognizance of such cases as Marine Magistrate where the parties were Europeans or Lascars, and that all marine cases in which Chinese were the parties would be heard and disposed of at the Police Magistrate's Court. It was with much satisfaction that the public now learnt that Mr. Lena, who had, with much credit to himself, filled the office of Harbour-Master during the absence on leave of Mr. Pedder, had been entrusted with the command of two gunboats to cruise in the river, and among the adjoining islands, for the suppression of piracy. The evil had lately been on the increase by being suffered to go unchecked, but, though it might have been dealt with sooner, it was considered fortunate that the appointment had been conferred upon one so likely to perform its duties efficiently.

Sentences of flogging deemed excessive and unnecessary.

Lieutenant Thomas Wade appointed Chinese interpreter of the Supreme Court.

Duties of the Marine Magistrate.

Europeans and Lascars.

The Chinese.

Mr. Lena and the suppression of piracy.

Day robbery at West Point.

An impudent robbery took place in broad daylight on Wednesday, the 29th April, near the stone quarry, a little to the westward of the naval stores, seven Chinamen, armed with various weapons, having stopped an equal number of their countrymen and stripped them of their clothes, leaving their own rags in exchange. Only one of the robbers was caught, the rest having escaped over the hill before assistance could be obtained.

Escapes from Gaol.

Several escapes had also taken place from the Gaol recently, and it was a subject of regret that, while some were flogged for trivial offences, other prisoners, who had been tried and sentenced to transportation, were permitted to escape. In February, six convicts had broken out of gaol, and a recent escape was that of a man undergoing inquiry upon a charge of attempting to poison his employer. In the first instance the prisoners, on a stormy night, had forced a door, and in the last a hole was burned in the roof allowing of free egress. It was a singular coincidence that in both cases the guard should have failed to discover the efforts which the prisoners were making to re-gain their liberty. No doubt, the want of a responsible head with

sole charge of the prisoners, and with no other duty to perform, was the primary reason for such carelessness, for the Chief Magistrate with his heavy duties, though to a certain extent relieved of some of his police work, must yet have had quite enough to do without having to exercise supervision, such as it was, over the prisons.

The Chief Magistrate, the Gaol, and the Police. His heavy duties.

Regulations for appeals to the Privy Council from the Supreme Court, dated the 21st January, 1846, were published on the 5th May, and on the 9th, Her Majesty's Letters Patent, dated the 10th January, 1846, appointing commissioners to hold admiralty jurisdiction within the Colony were published. The Commissioners thereunder were the Governor, the Chief Justice, the Officer commanding the Troops, the Colonial Secretary, the Chief Magistrate of Police, and the Flag Officers or Captains of ships of war in the harbour. Either of these commissioners could examine or commit parties charged with piracy. The prisoners could be tried by three of the commissioners, of whom the Governor or Chief Justice was to be one; with a jury. These Letters Patent now fully provided for a Court with admiralty jurisdiction in Hongkong, and those appointing Sir John Davis, the Governor, to be Vice-Admiral of the island, and John Walter Hulme, Esquire, Judge of the Vice-Admiralty Court, dated the 4th February, 1846, were duly published on the 4th June.

Appeals to the Privy Council.

Letters Patent. Commissioners to hold Admiralty Jurisdiction.

Court with Admiralty Jurisdiction.

Governor Davis, Vice-Admiral of the Island.

Chief Justice Hulme, Judge of the Vice-Admiralty Court.

The May Criminal Sessions commenced on the 27th. The calendar was a comparatively light one, some of the cases, however, being of importance, one prisoner, Ching Afat, being found guilty of murder and sentenced to death. A charge of piracy brought against seven boatmen in the employ of the opium farmer was heard at this session. Mr. McSwyney, for the prisoners, took an objection that the crime was committed at a different spot from the one mentioned in the indictment and which was not within the jurisdiction of the Court. The Chief Justice coincided in this and the prisoners were discharged. In this case an incident happened not at all uncommon in Chinese cases, principally due perhaps to difficulty in recognizing Chinese features or ability to discriminate amongst people so very much alike. It was remarked in Court that of the seven men committed by the Magistrate and bailed out, one of the number was not there, another man having taken his place at the bar. The Police, it was said, were ready to certify that a youth who was particularly conspicuous in the affair, and one of the seven bailed by the Chief Magistrate, was not in the dock on trial, but presumably owing to the preliminary objection taken, in consequence of which the prisoners were discharged, nothing arose upon the fraud pointed out, another person making up the number of seven. Another case was that of a European policeman who was accused of conniving at the escape of a prisoner under

May Criminal Sessions.

Ching Afat. Sentence of death for murder.

Piracy case discharged. Features of the case.

Difficulty in recognizing Chinese features.

Substitution of prisoners.

European policeman conniving at escape of

Ch. III § III. his charge. The case broke down on some technical point—a difference between the real name of the prisoner and that given in the indictment—but as such cases had been numerous, it was not without cause that suspicion of collusion between prisoners and their keepers had become general.

1846.

prisoner acquitted.

Collusion between prisoners and Police as Prison guards.

On the 3rd June, a Mr. Wiseman was summoned in the Police Court under section 7 of Ordinance No. 14 of 1845, and fined £5, for furious riding or, as was stated, 'galloping' his horse near the gap, a locality, says the report, used then for that purpose by nearly every resident on the island. It appeared that the real complainant in the case was General D'Aguilar, who accordingly again came in for a good deal of public talk. The Superintendent of Police, Mr. May, stated that General D'Aguilar whom the defendant had encountered, had desired him to pull up, but without effect, and then called out: "Is there no Police to take notice of this?" Upon which Mr. May, who was present, replied that defendant would be summoned.

Prosecution of a Mr. Wiseman at instance of General D'Aguilar for alleged 'furious riding.'

General D'Aguilar and public comments.

Subservient Magistracy.

This case was considered as fresh evidence of the objectionable nature of the Police establishment and of the subservient Magistracy. Both were under the control and influence of the Executive, and, until the connexion ceased, no effective Police or impartial Magistracy could be expected. As to General D'Aguilar, he had made himself somewhat conspicuous in his eccentric conduct on various occasions. From his actions it was supposed he had passed his life among Helots and that he knew little of the manly independence of a British community. Reference was then made to his stoppage of the bamboo-beating by watchmen in August, 1844; his interference with Mr. Welch who had some singing in his house, in September of the same year, and to his almost daily assumption of the duties of a constable in rebuking those who rode past him on the road, and after more abuse had been heaped on him, the General was asked how he could reconcile his treatment of others with the "bacchanalian orgies" which had been heard in his own house "on the evening of the Sabbath."

General D'Aguilar considered eccentric.

Frequent murders amongst Chinese.

The gallows no terror.

Execution of Ching Afat. His resistance on the scaffold.

Death by hanging regarded as ignominious by Chinese.

Murders were becoming frequent amongst the Chinese and the gallows, which had by this time been frequently in use, did not seem to be a great terror to evil-doers in Hongkong. A Chinaman named Ching Afat sentenced to death on the 28th May, as stated in the account for that session, for murdering a countryman of his on the 29th April, was executed at daybreak on the 6th June. The unfortunate man used every means in his power to resist a death which Chinamen regard as peculiarly ignominious. He refused to walk to the place of execution and had to be carried in a chair. On the scaffold he resisted being placed on the drop or having the rope fastened round his neck.

On the 13th June, the appointment of Mr. P. C. McSwyney, as Coroner was gazetted, as from the 29th May. The attack and murder of the captain and part of the crew of the *Privateer*, a schooner laden with opium, on the 14th June, created some sensation in the place. This was one of the most daring cases of piracy recorded for a long time past, and the continued exertions of the authorities did not go altogether unrewarded, one of the miscreants being afterwards arrested and convicted. This notorious pirate, named Chun Teen Soong, was tried and found guilty at the first session of the Court of Admiralty held in Hongkong on the 14th January, 1847. On his way to the place of execution, Chun Teen Soong appeared perfectly cool and indifferent, frequently smiling upon his countrymen as he passed them. He had embraced Christianity and was attended by the Reverend W. Gillespie. He acknowledged his guilt and said that he deserved to suffer, as he had been concerned in no less than nine acts of piracy accompanied by murder. He also gave other information which, it was hoped, would lead to the apprehension of his accomplices.

Mr. P. C. McSwyney, Coroner.

Daring piratical attack on the *Privateer* opium ship.

Conviction of the notorious pirate Chun Teen Soong.

His indifference on the scaffold.

Confesses to nine acts of piracy and murder.

Mr. Bruce, the Colonial Secretary, who had been on short vacation leave the previous year, proceeded to England on sixteen months' leave, on the 23rd June, by the P. & O. steamer *Lady M. Wood*. The following changes took place in consequence: Major Caine to officiate as Colonial Secretary; Mr. C. B. Hillier to perform the duties of Chief Magistrate, vice Major Caine, and Mr. C. G. Holdforth, the Deputy Sheriff, to perform the duties of Assistant Magistrate, vice Mr. Hillier. A curious fact in regard to Mr. Bruce's departure was, that the *London Gazette* of the 27th June, four days after his departure from Hongkong, contained a notification of his appointment as Lieutenant-Governor of Newfoundland.

Departure of Mr. Bruce, Colonial Secretary.

Changes in consequence.

Mr. Bruce appointed Lieutenant-Governor of Newfoundland.

On the 23rd June it was announced locally that there was a prospect of a barrister of "extensive legal acquirement and experience settling in the Colony," and, besides his professional ability, he was represented as a gentleman who would be a "welcome acquisition to the society of the place." No name was cited, but not long after, on the 29th July, Mr. N. D'Esterre Parker was admitted to practise in the Supreme Court. He was a solicitor, so the announcement mentioned above may not have referred to him. The following was Mr. Parker's advertisement in relation to himself:—

Arrival of Mr. N. D'Esterre Parker, solicitor.

He advertizes himself.

IN THE SUPREME COURT OF HONGKONG.

Mr. N. D'Esterre Parker, Solicitor of the High Court of Chancery, and one of the Attorneys of Her Majesty's Courts of Queen's Bench, Common Pleas, and Exchequer in Ireland, has been duly admitted to practise as a Solicitor, Attorney, and Proctor of the Supreme Court of Hongkong. Mr.

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Parker is likewise a *legally* constituted Public Notary of the High Court of Prerogative of England. Offices at Messrs. Bowra & Co.'s, Queen's Road.

Action against Captain Coates of the *Bomanjee Hormusjee* for damages. Influence of Acqui, Opium Farmer.

On the 27th June, an action was heard by the Chief Justice at the instance of several Chinese boatmen in the service of the Opium Farmer named Acqui, a man who was said to exercise much influence for good or evil amongst his countrymen in Hongkong, against Captain Coates, master of the vessel *Bomanjee Hormusjee*. The plaintiffs had been tried at the May Sessions on a charge of piracy, when they were discharged for want of jurisdiction. They now sought compensation for illegal detention on board the vessel named, when they were captured by the defendant and handed over to the Police. The Chief Justice, in delivering judgment, considered the detention was not justifiable, but showed his conviction that the plaintiffs had suffered no great damage and the defendant had been actuated by no improper motive, by awarding the plaintiffs only 50 cents damages. This case formed the subject of much public discussion. The law was ill adapted which could permit such proceedings, and where the Police were so few and criminals so plentiful. Captain Coates, in acting as he did, had shown much public spirit, and but for the objection raised by counsel on their behalf when on their trial and sustained by the Court, the charge would certainly have been brought home to them. Much sympathy was therefore due to the defendant for his praiseworthy action in this matter, and severe were the strictures passed upon the counsel who had conducted the case on behalf of the plaintiffs.

Plaintiffs previously tried for piracy.

They seek compensation for illegal detention on acquittal.

Chief Justice marks his indignation by awarding 50 cents damages.

Comments upon the law on the subject and public sympathy with Captain Coates.

Departure of Governor Davis to Chusan. General D'Aguilar assumes charge.

The Governor, Sir John Davis, accompanied by his aide-de-camp, Lieutenant Sargent, and the Chinese Secretary, the Reverend Charles Gutzlaff, left by H. M. S. *Vulture* on the 2nd July for Chusan, Major-General D'Aguilar administering the Government in the interim. This visit was generally believed to be in connexion with the handing over of Chusan to China. The rumour to this effect proved to be correct, for, on the 16th July following, the Governor, from on board the *Vulture*, issued a proclamation that Chusan had been restored to China in conformity with treaty engagements, and that after the departure of the 98th Regiment, any person visiting the island would become liable to the penalties provided by the 4th article of the supplementary treaty. The following was the proclamation:—

Chusan restored to China.

Governor's Proclamation and warning as to Chusan.

PROCLAMATION.

The island of Chusan, having been restored to the Emperor of China in conformity with treaty engagements, is no longer to be considered as one of those ports or places with which trade is permitted. British subjects are therefore warned that after departure of Her Majesty's 98th Regiment, which is fixed for the 22nd instant, any person resorting to the island, or to any

of its dependencies, will become liable to the penalties provided by the 4th article of the supplementary treaty. Ch. III § III. 1846.

God save the Queen.

J. F. DAVIS.

Given on board Her Majesty's Steam Vessel *Vulture*, this 16th day of July, 1846.

It may not be inappropriate to note here, that we first occupied Chusan in 1841, and that we gave it back to China on the 25th July, 1846, under the following clauses of a Convention dated 4th April, 1846 :—

"It is stipulated on the part of His Majesty the Emperor of China that, on the evacuation of Chusan by Her Britannic Majesty's forces, the said island shall never be ceded to any other Foreign Power.

Her Britannic Majesty consents, upon her part, in the case of the attack of an invader, to protect Chusan and its dependencies, and to restore it to the possession of China as of old; but as this stipulation proceeds from the friendly alliance between the two nations, no pecuniary subsidies are to be due from China on this account."

Important divorce suit: Matthyssons *v.* Matthyssons.

Mr. A. W. Elmslie, Secretary to Sir H. Pottinger.

Mr. G. T. Braine.

The divorce suit of Matthyssons *v.* Matthyssons, came before the House of Lords on the 2nd July, before Lord Cottenham and other Peers with the learned Judges. The petitioner, a British merchant at Macao, left that place for a voyage to Australia leaving his wife behind under the protection of her brother, Mr. Adam Wallace Elmslie, the then Secretary to Sir Henry Pottinger, the British Plenipotentiary in China and Governor of Hongkong, and during his absence she carried on an adulterous intercourse with a merchant of the name of George Thomas Braine. In his examination, the petitioner stated he could not bring an action for damages against the latter as he was beyond the jurisdiction of the Courts of Judicature in England, and that he had obtained a definitive sentence of divorce *a mensâ et thoro* against his wife in the Consistory Court of London in November, 1845. This case is now noticed owing to the parties to it being well-known in the Colony, apart from the interest it also evoked through Sir Henry Pottinger being a witness in it and the comical attitude of a Chinese woman when before the Court in regard to the taking of an oath. On calling the Chinese woman, with a gentleman who acted as interpreter,—

Chinese oaths.

"Lord Brougham inquired whether it was not required of her to break a saucer before she gave her evidence?*

The interpreter said that she was very reluctant to be sworn a second time, and that her gods would be very angry with her.

Lord Brougham.—Tell her that her gods will punish us and not her, if anything wrong is done.

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* The noble Lord evidently here had in mind the case of *Regina* v. *Entrehman and Samut*, Car. & Mar. 248. On the question of Chinese oaths, see further Chap. XII., *infrà*.

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The interpreter endeavoured to induce her to take the oath, but she still declined.

Lord Brougham.—Tell her that no calamity can befall her if she will consent to be sworn.

She still persisted in adhering to her religious opinions. After several ineffectual attempts to have her sworn,

Lord Brougham said to the interpreter.—Tell her that we shall be under the necessity of committing her to prison if she will not be sworn.

She ultimately consented to be sworn.

After Mr. Austin, who appeared for the petitioner, had read a letter addressed to Mrs. Matthyssons by Mr. Braine,

The female Chinese, whose name was Kowhan, was then called in and Lord Brougham desired the interpreter to tell her "that now she has been sworn in" (this was done with the formality of breaking the saucer)—"if she does not speak the truth, her gods will punish her."

The interpreter then made her acquainted with the noble and learned Lord's remark.

Lord Brougham.--Now ask her "who are her gods"?

In reply she said, through the interpreter, that the Chief was Buddah.

Lord Brougham.—Then tell her that Buddah will punish her most severely if she does not speak the truth; and that she will also be punished in this world if she does not speak the truth.

This observation being explained, she replied, in Chinese, "I will speak the truth."

The witness was then examined. She spoke of familiarities such as kissing.....

Lord Brougham.—What is the word "kiss" in the Chinese tongue?

'Kiss' in Chinese.

The interpreter.—"Suisui." *

† ....."

Matthyssons' Divorce Bill read a second time.

The Bill was then read a second time.

Complaints against European Police. Extortion.

Complaints against the European Police, noticed early this year, again began to be heard. On Sunday, the 5th July, two European policemen, named Patterson and Swimmer, and a Chinese policeman, extorted ten dollars from an opium seller. A coolie was sent to the shop, it being against the regulations to have such establishments open on Sunday, and begged that he might have some opium, as he had forgotten to purchase some on Saturday night and could not exist without it. The dealer was prevailed upon and acceded to his request, but no sooner was the transaction closed when the three men pounced upon their victim and mulcted him of $10 hush-money. These policemen were reported to be getting worse and their superior officers callous at their doings, and so long as these iniquities were permitted, no reform could be looked for. The

The Chief Magistrate again as

Chief Magistrate was still practically the head of the Police and

* This is evidently a misprint for 'tuisui' which is the word in the mandarin dialect for 'kissing.'

† *The London Mail*, July 7, 1846. *See* Lords' Journals, Vol. 78., 831-2,858.

was said to have interfered greatly with the new Superintendent, Mr. May, and his Inspectors, especially by his disposition to support the disreputable men who had been discarded from the Army and taken into the Force. Bribery, robbery, perjury, and connivance at the escape of prisoners constituted some of the charges now levelled at the European Police. Tried for extortion in connexion with the above case on the 10th November, these three men were discharged on a technical point raised on their behalf, and as to their ultimate fate the records do not speak.

Head of the Police. His interference with Mr. May, the Superintendent. Charges levelled at the Police.

On Wednesday morning, the 15th July, at half past six, three prisoners, Sinclair, formerly gunner of the *Ariel* (condemned to transportation for life for piracy at the June Sessions, 1845), Ross, a black (15 years for cutting and maiming), and a soldier of the name of Walker (14 years for striking his sergeant), escaped from Gaol, having succeeded in cutting their irons with a saw made out of a razor. The Deputy Gaoler, accompanied by two Police officers, pursued them over the hills at Kowloon, where they met the convicts returning with the intention of giving themselves up to the authorities, after having been stripped and maltreated by the Chinese, and perceiving no prospect of effecting their escape from justice.

Escape of convicts Sinclair, Ross, and Walker.

They give themselves up after ill-treatment by Chinese.

A Coroner's inquest, held on the 15th July upon the body of a Chinese woman of the prostitute class, disclosed facts which are perhaps not of rare occurrence in these parts. It consists in the practical abandonment of an inmate of a brothel on the woman becoming so diseased as to be of no more 'profit' to her keeper, the sole object in view therefore, being to get rid at all risk of the *slave*. In the case under consideration, the facts elicited were none the less abominable and aggravated by the extraordinary verdict of the Jury under the guide of a Coroner presumed to be a man of some legal experience. A young woman, a prostitute in the Taipingshan district, being afflicted with a lingering disease, and after having been ineffectually treated by native doctors, her mistress, a woman named Chui A Kwei, "lest her house might be defiled by the girl remaining there," ordered the miserable creature to be carried out almost naked, and left to perish in the open waste on the hill-side. There could be no doubt that death was thus hastened and premeditated, and yet the Jury gave in a verdict "that the deceased died by visitation of God, but that her mistress was highly censurable for inhumanity towards deceased," and this was accompanied with a magisterial admonition from the Coroner that "had the Jury advanced a step further, he should have deemed it a duty, demanded of him by every principle of justice, to commit her for trial at the next

Coroner's inquest upon body of a Chinese prostitute. Abandonment of inmate of brothel on becoming diseased. Object in view. Extraordinary verdict of the Jury in the case. Facts of the case. Death of deceased premeditated. Curious admonition of Coroner.

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Criminal Sessions of the Supreme Court." The woman was desired to warn keepers of brothels not to expose sick prostitutes in the fields or by the public roads under pain of the consequences that must for the future inevitably follow any such proceeding. From the evidence there could have been but little doubt that the keeper was guilty of murder, and that she should have been committed upon that charge which would have been a much more effectual mode of preventing the repetition of such savage crimes than the Coroner's warning." The facts, moreover, implied that such atrocities were frequent among the Chinese and had been common here, and the case only increased the surprise that an instance so completely brought home should have been passed over with ninatory generalities about "consequences that must for the future inevitably follow such a proceeding!"

The keeper of the brothel was guilty of murder.

Such atrocities common among the Chinese.

The keeper fined for 'exposing' the girl.

It was, in short, a case of deliberate murder for which there was no excuse. The woman Chui A Kwei was afterwards prosecuted before the Assistant Magistrate for 'exposing' the girl and fined twenty dollars, though under what law is not apparent, but at all events it was hoped that this sentence would have a much more lasting impression upon her than the Coroner's admonition after the stupid verdict of the Jury recorded above. There was no doubt that this was again another instance of the incapacity of some of the judicial officers, and at this distance of time one cannot but readily believe how well founded were some of the grievances in regard to the administration of justice in Hongkong. Mr. McSwyney, through his action in this inquest, had proved how incompetent a Coroner he was, and after his further behaviour in the Duncan-Jenkins affair mentioned hereafter, no wonder he received his *congé* from the Government. On the 16th July, Mr. Robert Rutherford was appointed one of the appraisers of the Supreme Court under its Ecclesiastical Jurisdiction.

Incapacity of judicial officers.

Incompetency of Coroner McSwyney.

The Duncan-Jenkins affair.

Mr. R. Rutherford, Appraiser of the Supreme Court.

Flogging.

The system of flogging in vogue in the Colony and the frequent and heavy sentences passed in the Police Courts ended in attracting attention at Home. On the 5th August, Dr. Bowring called the attention of the House of Commons to the subject, and particularly to the case of the 54 men punished on the 25th April.* The proceedings before the Magistrates had often engaged public notice, and at various times some of the sentences had called forth, rightly or wrongly, public censure. For the most trifling offences, it had been alleged, the lash was unsparingly used in most instances where some unfortunate Chinese had omitted to take out a registration ticket, while the lawless ruffians who congregated in the town

Dr. Bowring moves House of Commons about case of the 54 men flogged.

* *Antè* p. 92.

and confined their depredations to piracy or highway robbery, were allowed to go about with impunity, the Police not taking any trouble about them. Many were the abuses in Hongkong and many were the changes asked for, but in no Department apparently was abuse more glaring than in the Magistracy, and among the numerous requirements none was more urgently asked for than a properly qualified Chief Magistrate and an independent head of Police.

The following was Dr. Bowring's motion in the House of Commons:—

"FLOGGING AT HONGKONG."

"Dr. Bowring rose to put the question, of which he had given notice, whether the attention of the Government had been called to the frequent application of flogging as a punishment for petty offences in the island of Hongkong, it being stated that no less than 54 persons were so punished on Saturday, the 25th day of April last, for not having obtained tickets of registration, and after such infliction, were delivered over to the Chinese Authorities to be subjected to further penalties under the criminal code of that Empire? From all he could learn, the use of flogging was habitual in the Colony of Hongkong, it was frequently applied, and the extent to which the lash was used was almost incredible. The Chinese, for the most trivial offences, were publicly scourged, and he wished to know whether any steps had been taken to put a stop to these barbarities.

Mr. Hawes said the Government had no accounts of any proceedings of the kind alluded to by the honourable member. He could not find any power by which personal punishment was inflicted, and care should be taken that a searching inquiry should be made by the next mail into the circumstances of the case. The proper punishment, so far as he could learn, was by fine and imprisonment." *

Flogging less resorted to.

The records do not show that anything ever came of this motion. On the contrary, as will be seen hereafter, although, after Dr. Bowring's motion, flogging was less resorted to as a punishment, it was nevertheless applied again after a time, the necessity doubtless demanding it. Many of the men flogged, however, were reported to have been utter strangers to Hongkong, some of them passers-by on their way to neighbouring places, and who on coming ashore were pounced upon by the Police for registration tickets, the necessity for which they were totally ignorant of, and hauled off and treated as vagabonds. In mitigation of the evils complained of, though an elective Legislature was considered out of the question, it was hoped that the day was not far distant when a few of the leading members of the community would be called to the Council to advise the Government upon local needs. As to the Magistracy, it was not independent. The duties were performed by two paid

Unofficial members of the Legislative Council desired.

Comments upon the Magistracy.

* This was no doubt true, but other punishments were sanctioned under another Ordinance—No. 10 of 1844,—the last section of which contained the following provision:—

"XXV. And be it enacted, that in lieu of the whole or any part of any penalty, provided by any law, statute, or ordinance whatsoever, it shall be lawful for the Court, or Justice, before whom the matter shall be adjudicated upon, to sentence any offender, being a native of China, or a native of Hongkong of Chinese origin, to undergo such punishment, in conformity with the usages of China, as has hitherto been usually inflicted on natives of China, committing offences in this Colony."

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servants of the Colony, from whose decision there was no appeal. An unpaid Magistracy might not be an undesirable thing; indeed of the qualification of the holders of the magisterial appointments there was but one opinion, and the evils caused by their ignorance, incompetency, and subserviency to their superiors was a matter of general notoriety, and under the circumstances it was thought that honorary justices selected amongst the leading residents might give more satisfaction.

**Honorary Justices.**

**Comments upon Major Caine as a Magistrate.**

The Chief Magistrate, Major Caine, was an Anglo-Indian, "a soldier since he was strong enough to carry a drum," ignorant of all law except martial law, and who had boldly asserted that, as flogging and branding were punishments then inflicted upon soldiers, so ought they to be inflicted upon natives of the Colony. Upon these principles he had acted since his tenure of the magistracy, and the records of his Court showed that for the most trivial offences men had been sentenced to the lash. His assistant, Mr. Hillier, had been trained under his eye. He was a gentleman of absolutely no legal training. Originally the second mate of a merchant ship, Sir Henry Pottinger, who appeared to think "that anybody would do for the bench," was induced to appoint him assistant to Major Caine, and since the latter had been officiating as Colonial Secretary, his pupil had held the office of Chief Magistrate, in some instances acting under direct instructions from the Governor. Uncharitable remarks, undoubtedly, but nevertheless to a great extent true. As an illustration of the cases of partiality and subserviency shown by the Magistrates, it was alleged that once the Governor, observing a Chinaman cutting grass in the vicinity of Government House, had the man arrested and sent to the Police. The next day the Superintendent of Police informed the Magistrate (doubtless according to instructions) that he did not intend to prosecute, notwithstanding which the Magistrate replied that *he* would prosecute, and thereupon sentenced the man to be flogged. On another occasion, a member of the Government returning from a dinner party much intoxicated was followed by an Indian policeman who feared he would fall from his horse. As a reward for his kindness when the gentleman arrived at his house, he dismounted and kicked the policeman. On the Superintendent of Police applying for a summons the next morning against the delinquent, the summons was refused. As thus constituted, no impartiality could be expected, and some of the grievances were, no doubt, well founded. The roads were now infested by robbers, for the conviction of any one of whom a reward of one hundred dollars was offered by the Government, and things had got to be so bad that the public were advised by the authorities not to proceed to any distance from Victoria either alone or without arms about them. Three sepoys going from Hongkong to

**Comments upon Mr. Hillier, Assistant Magistrate.**

**No legal training.**

**His previous career.**

**Uncharitable remarks.**

**Cases of partiality and subserviency of the Magistracy.**

**No impartiality.**

**Crime.**

**Government rewards.**

**Sepoys attacked.**

Chuck-chu (Stanley) on Saturday, the 15th August, were attacked by a party of Chinese robbers and ill-used. One of them died in the military hospital the next day, both of the others being wounded. No trace of the robbers was discovered.

Action of the Executive in the case of the Portuguese Marçal charged with fraud.

The Executive appeared determined to maintain a reputation for consistency in setting at defiance well-known and long-established principles of the constitution of England. A Portuguese subject named Marçal established himself in Canton as an opium broker. After getting into credit, the man sold opium to the value of $60,000, receiving payment in cash, and, as was usual then, giving the purchasers orders upon ships moored in the outer waters. The orders were not honoured, the seller not having opium on board these vessels. In short, the transaction was fraudulent, Marçal leaving Canton before his knavery became known and taking refuge in Macao. On the application of the parties defrauded, Marçal was arrested in Macao, and had been confined for upwards of seven months without being brought to trial. From causes which were not made public, the Portuguese Government suspected that Messrs. d'Assis, Pacheco, and de Mello, three Portuguese gentlemen, were in collusion with Marçal and had shared the spoil. The first of these gentlemen held the office of Deputy Judge of the Supreme Court at Macao, the other two were merchants. It was alleged, however, that in bringing the charge against these individuals, the Macao Government was actuated by motives not very creditable, the parties being men of influence and opposed to some of the official measures. Warrants for the apprehension of d'Assis, Pacheco, and de Mello were accordingly issued by the Chief Justice of Macao, previous to which the first two had sought refuge in Hongkong and the latter in Canton. The Governor of Macao, acting upon the suggestion of the Chief Justice of that place, made the following application to Sir John Davis for delivery of the persons of the three fugitives, though, from the wording of his letter, it is very evident that he did not expect it would be successful, and the more so because, under similar circumstances, he had himself refused to give up a British subject who had fled to Macao.

The case of the Portuguese d'Assis, Pacheco, and de Mello in collusion with Marçal.

They escape to Hongkong and Canton.

The Governor of Macao asks for surrender of d'Assis and Pacheco.

Macao, 22nd August, 1846.

To

H. E. Sir JOHN FRANCIS DAVIS, Bart.,

*Governor of Hongkong.*

Sir,—Our Chief Justice forwarded to me the enclosed confidential communication, requesting me to ask of Your Excellency the delivery of Francisco d'Assis, Cypriano Antonio Pacheco, and Alexandrino Antonio de Mello, indicted in this Court for the crime of robbery, and who, it is generally stated, are at present living at Hongkong.

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I hasten to communicate to Your Excellency this requisition, and trust that Your Excellency will kindly comply with it, should it not go against the regulations of your government for similar cases.

I have, etc.,

JOÃO MARIA FERREIRA DO AMARAL,
*Governor of Macao.*

**Mr. Hillier under instructions, without any treaty, issues warrant.**

In direct opposition to the established usage of the British Government (where special treaties have not been entered into for the mutual surrender of criminals) the Acting Chief Magistrate, Mr. Hillier, with his well-known incapacity and subserviency, and acting under instructions, issued a warrant for the apprehension of Pacheco and de Mello on the charge of the robbery committed at Macao. The parties were arrested accordingly, and, after a night's confinement, brought before the Magistrate on the 25th August, 1846, but no one appeared to prosecute, nor was there the slightest evidence adduced against the accused. When brought before the Court, it was objected by their solicitor that the letter of the Governor of Macao could not be received in evidence until proved in the regular way, which the Magistrate was not prepared to do, and there being no witnesses to adduce, the immediate discharge of the accused should have followed, on the very reasonable ground that the Court had no proof before it of the crime charged in the warrant. This course Mr. Hillier declined to adopt; he appeared to be on the horns of a dilemma and could neither do his duty nor discharge it, and stated that before doing anything further in the matter *he would consult the Governor*. He likewise refused bail or to give the prisoners time to apply to the Supreme Court for a writ of habeas corpus, and, to the astonishment of every one, the same evening, like convicted felons, they were put on board the *Young Hebe* and sent off to Macao!

**Arrest of the Portuguese and appearance before the Magistrate. Their solicitor objects.**

**Mr. Hillier says he will consult the Governor. The same evening they are shipped off to Macao.**

**Indignation in Hongkong.**

The conduct of Sir John Davis was generally condemned and excited general indignation in Hongkong. Without reference to the question of the guilt or innocence of the parties, justice had been most certainly denied them, and herein now the Magistrate had incurred a grave responsibility that raised a question of international law, which even the ultimate conviction of the Portuguese could not justify. The Governor had committed himself and compromised the dignity of the Sovereign whom he had the honour to represent. Even with a treaty, the application of a foreign power for the person of a refugee is always received with great caution. The surrender of these men was considered a grave violation of national law tending to degrade the country in the eyes of foreigners, who were thus sceptical of our boasted privileges. After the Governor had thus surrendered the victims who had claimed the protection

of our flag, on their arrival in Macao they were imprisoned for a short time, and then held to bail, pending reference to the Supreme Court at Goa. Shortly afterwards, the news reached Hongkong that on the 15th September the prisoners had been exonerated of the charges brought against them and discharged. The knowledge that justice had been done to these people gave peculiar satisfaction here, owing to the treatment they had received at the hands of the local authorities, as the opinion had prevailed in Hongkong that the prosecution on the part of the Macao authorities was entirely political, the accused being strongly opposed to some of the measures of the Government. On their release, the two victims of the acting Chief Magistrate, Mr. Hillier, now determined to sue him for damages before the Supreme Court, though this did not affect the question as to whether he was justified in obeying the orders of Sir John Davis. As will be seen hereafter, the action for damages, laid at $25,000, first came on before the Supreme Court in April, 1848. Sir John Davis had left about a month before.

Acquittal of the prisoners in Macao.

They sue Mr. Hillier for damages.

Action laid at $25,000.

Tenders for the passage to Singapore of four Indian convicts, and to Bombay of twenty-four Chinese convicts, were advertized for by Government on the 28th August, but under what order is not apparent, for there had been heretofore no proclamation of transportation to either of these places, and, as will be seen later on, the proclamation of the 12th December, 1846, did not relate to Bombay at all.

Transportation of convicts to Singapore and Bombay.

On the 3rd September, Major Caine, the officiating Colonial Secretary, was gazetted a member of the Legislative Council, and on the 5th, Mr. Sterling, the Attorney-General proceeded on leave of absence for eighteen months, on sick certificate; he had thus been in the Colony a little over two years before taking leave. That he had had an unusual amount of business to attend to, the records amply testify, and it is not to be wondered at that he now required rest.

Major Caine, acting Colonial Secretary, gazetted a member of the Legislative Council.

Departure of Mr. Sterling, Attorney-General, on leave.

His career in Hongkong.

Notwithstanding the cry against the enormities of human flogging in the Colony, events showed that nevertheless it did not act as such a great deterrent after all, against crime amongst the Chinese. On Saturday night, the 19th September, a police constable recognized some old offenders amongst a gang of suspicious-looking coolies in the Queen's Road, and, suspecting something wrong, concealed himself. Shortly afterwards, he observed one of them, who had been flogged only the previous day, carrying something concealed in his jacket and which was afterwards identified as a lamp recently stolen. The policeman who had arrested this man succeeded in capturing two more of the gang connected with the former and who had also been flogged and had their tails cut off for former offences.

Flogging not a deterrent against crime in Hongkong. Instance quoted.

Cutting of 'tails.'

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They were now sentenced to "one hundred lashes and six months imprisonment each, with hard labour."

Confirmation of news of the appointment of Mr. Bruce to Newfoundland.

It was during this month the news reached the Colony that Mr. Bruce, the Colonial Secretary, who had proceeded on leave in June last, had received the appointment of Lieutenant-Governor of Newfoundland, as before noticed. Nothing was yet known as to his successor, and the changes effected on his departure continued in force.

Ordinance No. 6 of 1846, for regulation of proceedings in the Supreme Court during absence of Mr. Sterling.

Early in October Ordinance No. 6 of 1846 for the regulation of criminal proceedings in the Supreme Court during the absence of Mr. Sterling, the Attorney-General, was passed. Thereunder the Governor was empowered to appoint temporarily a person to carry on criminal proceedings only. No provision whatever was made for the performance of the other duties of the Attorney-General, for reasons which may now strike one as very apparent. On the 15th October, a Government Notification appeared that, in consequence of the absence on medical certificate of the Attorney-General, the Governor had been pleased, as a temporary measure, to appoint Mr. N. D'Esterre Parker, a gentleman previously mentioned herein, to perform the duties of Criminal Prosecutor. The confirmation of the Ordinance which created this appointment was not received until the 23rd April, 1847.

Mr. N. D'E. Parker, Crown Prosecutor.

Messrs. R. Coley and W. Gaskell in partnership.

In the meantime Messrs. Richard Coley and William Gaskell, "Attorneys of Her Majesty's Court of Queen's Bench at Westminster in England and Solicitors of the High Court of Chancery," took occasion to announce to the public that they had been duly admitted to practise as "Attorneys, Solicitors, and Proctors of the Supreme Court of Hongkong, and had entered into co-partnership."

Inefficiency of the Magistracy. The Duncan-Jenkins episode. Extraordinary conduct of Mr. Hillier, acting Police Magistrate, and of Mr. McSwyney, Coroner.

Irregularities and complaints about the inefficiency of the Magistracy, of which so much had been heard, now reached a crisis. On Tuesday, the 27th October, 1846, Mr. Duncan, a sailmaker, reported at the Central Police Station that his cook had absconded with $200 of his money, and as he thought it probable that the thief would sail for Macao or Canton in the evening, he requested the inspector would allow a constable to accompany him for the purpose of making a search. The request was acceded to, and Mr. Duncan, accompanied by some friends and Police Constable Jenkins, went in the evening to search the boats. Having observed a suspicious-looking craft near West Point, they gave chase, and on their approach the crew, between 20 and 30 in number, jumped overboard. The majority of them were picked up, though some, consisting chiefly, it was believed, of the boatmen, reached the shore and escaped, but five men were drowned in the attempt. While Duncan and Jenkins were engaged in rescuing the men from

the water, those in the Chinese craft pulled out to sea, but were pursued and captured. On board were found muskets, daggers, spear-heads, and other suspicious-looking articles. The men captured, to the number of thirteen, were next day brought before Mr. Hillier, the acting Chief Magistrate. Four represented themselves as residents of Victoria, but, being found to be unregistered, were sentenced to receive 50 strokes of the rattan and to be afterwards forwarded to the mandarins at Kowloon that they might be sent to the places to which they belonged, the remaining nine being treated as rogues and vagabonds and imprisoned "with hard labour for three months and thereafter to quit the island." That these men were innocent of all crime, having been arrested under suspicious circumstances only, and had, moreover, been grossly ill-treated, there could be but little doubt, especially those who had been delivered over to the Kowloon Chinese authorities, who, it was surmised, were not long probably before despatching them where "the wicked cease from troubling and the weary are at rest." But it was now left to Mr. McSwyney, the Coroner, to play a double part in connexion with this matter. In his capacity of a solicitor, and on behalf of the nine men imprisoned as above stated, he moved the Court for a writ of Habeas Corpus, and on the 18th November, on hearing the facts, the Chief Justice ordered the discharge of the men. Messrs. Duncan, Jenkins, and party had now also to answer for their action. At an inquest held, strangely enough, by Mr. McSwyney, as Coroner, upon the bodies of four of the men afterwards picked up in the harbour, which commenced on Thursday, the 29th October, and terminated after three adjourned sittings on Monday, the 2nd November, the Jury (after retiring and having been shut up six hours) at 9 o'clock at night, returned with a verdict of manslaughter of the *five* men drowned, against Duncan and Jenkins, and others who had accompanied them upon the excursion in question, and who thereupon were taken into custody. Turning the tables upon Mr. McSwyney, on the 18th November, the very day that the latter had obtained the discharge of the nine men sentenced to imprisonment by Mr. Hillier, Mr. Farncomb, solicitor, on behalf of Mr. Duncan, under a writ of certiorari, obtained a rule calling upon the Coroner, Mr. McSwyney, to show cause why the proceedings at the inquest held by him as aforesaid, should not be quashed and the prisoners forthwith discharged. On the 21st, the date on which the rule was made returnable, Mr. McSwyney showed cause. The proceedings showed that the Jurors had not sealed the inquisition; that there had been a view of four bodies only and not five, and that except one the rest had not been identified; that the prisoners had been sworn and examined as witnesses;

**Verdict of manslaughter against Duncan and Jenkins.**

**Tables turned on Mr. McSwyney.**

**Irregularities at inquest conducted by Mr. McSwyney.**

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that some of the witnesses had not been examined upon oath; and that, after the verdict of the Jury, the Coroner had granted bail to the prisoners. The Chief Justice, after disposing of some of the points raised by Mr. Farncomb, and taking the Coroner to task for presuming to accept bail for prisoners committed upon his own warrant, asked Mr. McSwyney why he had failed to examine some of the witnesses upon oath, to which he replied "so far as his knowledge of the proceedings in the Police Court extended, a simple statement was merely required," which called forth the remark from the Chief Justice that "this assertion was too incredible, involving as it did so serious a charge of neglect against the Stipendiary Magistrates." Asked whether he had explained the law of homicide as it bore on the evidence to the Jury, Mr. McSwyney replied he had gone very fully into the matter. "It would appear," retorted the Chief Justice, "that you have given them so much law as quite to stagger them in coming to a verdict," and, after further commenting upon the irregularity of the whole of the proceedings, he pronounced them null and void, and made the rule absolute, ordering the discharge of the prisoners forthwith. The evidence of official incapacity was never more complete, for five men had met with unnatural deaths, thirteen presumably innocent men had been flogged and imprisoned, and persons guilty of homicide had been set at large. The public had thus been given another example of the laxity of the law in Hongkong in extreme cases, and its injustice in others of less importance. The 13 victims of magisterial incapacity had been declared by the Jury innocent of all crime, but unfortunately not until four of their number had undergone the torture of the lash and been handed over to the Chinese authorities. The gross injustice of the treatment these men had received could not be exceeded, and the obstinacy which still sanctioned their punishment after it had been proved that the men in the boat were inoffensive people and not pirates, as was at first alleged, could not be too severely censured. When the writ of Habeas Corpus was applied for, Mr. Hillier being present in Court was asked by the Chief Justice whether the nine men had not been sentenced by him merely "on a suspicion of felony," and in the face of his own warrant, he replied "No, my Lord, these men were punished under the vagrant law of England"—a law, it was remarked, that did not apply to this Colony. To add to the absurdity of the statement, it was stated that the men were afterwards found to be passengers who had taken their departure from Hongkong. "This mode of trial," it was remarked, "may have answered very well, when the black Douglases rode borders at the head of 1,500 men, executing 'Jeddart justice' upon outlaws and other offenders, but in the nineteenth century it was hoped more regard was paid

The Chief Justice takes Mr. McSwyney to task.

Result of official incapacity.

Innocent men flogged and imprisoned.

Mr. Hillier before the Chief Justice.

to form and to the impartial administration of justice." Apart from the Executive authorities, it was presumed that the young man who then held the appointment of Chief Magistrate, Mr. Hillier, had not become perfectly callous to human suffering, and that he felt some compunctions of conscience when he considered that, without proof of guilt and without the slightest grounds for suspicion, he had unhappily perpetrated an act which nothing could extenuate. Whether it was desirable that the Magistracy of this Colony should be deprived of the power of inflicting corporal punishment upon the Chinese was a question upon which many differed, but the culpable and negligent manner in which the power was abused, showed that the Magistrates were unfit for the offices they held. That such was the conviction of the great bulk of the European inhabitants could not be disputed; and the reputation of the Hongkong bench demanded that a legally qualified person should be appointed to the position of Chief Magistrate, and that the important duties of the bench should not be entrusted to "needy soldiers and obscure adventurers."

Public opinion of Mr. Hillier.

The abuse of the power of flogging.

A legally qualified Chief Magistrate desired.

At the Criminal Sessions held on the 9th November, the Magistrates again came in for censure. The Calendar was a heavy one, but there were a number of cases which might have been dealt with in a summary way, and in some instances the prisoners were discharged through neglect on the part of the committing Magistrate. It was discovered that it had heretofore been the practice not to sign the warrants of commitment but merely to affix the seal on them, and in one case at this Sessions this was actually proved. On calling for the warrant in connexion with a case before the Court, after looking at it the Chief Justice pronounced it invalid, saying "it was a worthless piece of paper," and adjourned the case, giving the Crown Prosecutor, Mr. Parker, who now appeared under the powers vested in him by Ordinance No. 6 of 1846, time to ascertain how far precedent had ever established the mere use of a seal of office in lieu of the sign manual. His Lordship further animadverted strongly upon the irregularity, and recommended that all warrants issued be forthwith signed by one or other of the committing Magistrates. In another case, as stated above, the Chief Justice had occasion to comment upon the loose manner in which the evidence had been prepared, and remarked that "things were very slovenly managed and that some one must be responsible for it." It was hoped, coming from the quarter it did, such observations would be profited by.

November Criminal Sessions.

Paltry cases committed. Magistrate censured.

Warrants of commitment sealed but not signed.

Chief Justice's opinion.

Ordinance No. 6 of 1846.

Loose manner in which evidence taken.

Under instructions from the Secretary of State, on the 19th November, consequent upon the promotion of Mr. Bruce, it was announced that the office of Auditor-General would be amalgamated with that of Colonial Secretary and that, pending Her

Colonial Secretaryship and Auditor-Generalship amalgamated.

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Majesty's pleasure, both of these offices would be filled by the Honourable Major Caine, who now practically relinquished once for all the onerous duties he had discharged for so long in connexion with the general administration of justice. Up to this time, Major Caine had shown a dignified and exact discharge of his official duties, and a more conscientious, zealous, and devoted officer it would have been impossible to find. The records throughout up to this period, despite occasional unfavourable criticisms, show him as one thoroughly imbued with a determination to do his duty, and there could be no doubt that his present promotion had been well merited. His first appointment to the Colony dated from the 30th April, 1841, when he was appointed Chief Magistrate by Captain Elliot, Her Majesty's Plenipotentiary, on the taking over of Hongkong, and no better selection, having regard to his knowledge of local affairs especially, could have been made for the important position he was now called upon to hold. The past showed the energy he had displayed in his determination to put down the band of lawless marauders that at one time infested the island.*

**Major Caine appointed acting Colonial Secretary and Auditor-General.**

**His promotion well merited. His past career reviewed.**

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* The *Naval and Military Gazette*, of the 20th April, 1844, contained an article eulogistic of the services of Brevet-Major Caine, who had now, as stated above, become the Colonial Secretary, and considering his long services in Hongkong, it may not be considered inappropriate even at this stage of his career to notice his earlier services. Writing on above date, the article proceeded :—

"Brevet-Major Caine, of the 26th Regiment, has now served his country nearly thirty years—his first commission being dated July, 1814. During this long period, he has served uninterruptedly in India and China, without once obtaining furlough. He is a Lieutenant of June, 1819; a Captain of December, 1827; and a Brevet-Major of December, 1841. Major Caine served in the Nepal war of 1815, and was present with the Light Company of the 17th Foot, at the action of Jeetgurh. He likewise served in the Deccan War, and at the victory of Jhubbulpoor slew with his own hand, in defence of the regimental colours, an Arab Chieftain. When the British forces invested Bhurtpore, under Lord Combermere, the subject of this sketch, who had exchanged to the 14th Foot, was appointed Brigade-Major to the 1st Infantry Brigade, and, during the progress of the siege, rendered important services. On the morning of the storm (18th January, 1826), he killed three of the enemy in personal combat; and, when the ammunition of the advanced column of the 14th had been expended, led a small party of volunteers over a rampart of considerable extent, which had been re-manned by the enemy, through whom he successively cut his way, and returned with reinforcements as well as ammunition. On this service he was wounded in the foot by a grape-shot, whilst charging the enemy's guns. Major-General Sir Thomas Reynell thus acknowledged in his despatch the gallant deeds we have just noticed :—'Major Everard reports that Brigade-Major Caine, of H.M.'s 14th Foot, accompanied him throughout, and distinguished himself particularly.' On two occasions the subject of this tribute of friendship (for we are indebted to one of his old comrades for these details) volunteered to lead the Forlorn Hope.

In the 14th Foot he was regimental Judge-Advocate, and frequently performed the duties of Adjutant. He also on many occasions officiated as Deputy Judge-Advocate-General of the Meerut Divisions, as well as Brigade-Major of that station.

In 1834, when the force was ordered against Joudpore, Major Caine (now in the 26th Foot) was appointed Brigade-Major to the 1st Brigade, under General Oglander, but Mann Sing having come to terms before the investment of his fortress, this brigade was countermanded whilst *en route* to Marwar. On the force being detached for service in China, Major Caine, then only a Captain, was at first selected as Adjutant-General, but it having been afterwards determined by Government that the heads of departments should consist of Field Officers, Lieutenant-Colonel Mountain—than whom a better nomination could not have been made—was gazetted to the situation. The appointment of Deputy Judge-Advocate-General was then tendered, but the Major preferred remaining on the staff of the ever-to-be-lamented General Oglander, on which he had been serving since 1839, to accepting a situation comparatively of a civil character. At the capture of Chusan, he commanded the Grenadier company of the Cameronians, and after the fall of

As will be seen, it was not until April, 1847, that he was confirmed in the appointment.

Fees on the insolvency side of the Court.

Ordinance No. 3 of 1846.

Transportation of convicts to Singapore and Bombay.

Fees payable on the insolvency side of the Supreme Court which had been passed by the Court under Ordinance No. 3 of 1846 "for the relief of Insolvent Debtors," were duly published on the 19th November. On the 23rd of the same month, Government, as in August last, called for tenders for passage to Bombay of thirty-one Chinese convicts, and to Singapore of seven other convicts. Under what orders these men were to be transported to the places mentioned, as stated before, is not apparent, as the proclamation of the 12th December, hereinafter mentioned, was yet quite unknown, although it may be that from Bombay, as the most convenient station, the convicts could have been taken over afterwards to Scinde.

Convicts taken to Scinde.

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that island, was appointed one of the British Commissioners, as also Chief Magistrate of the place. But it is not as the mere soldier that Major Caine is known in India; his polished manners, honourable character, and general ability, obtained him the esteem and friendship of a succession of General and other officers on whose staff he had served. General Hardyman, Colonel Edwards (killed at Bhurtpore), Brigadier McCombe, Sir Samford Whittingham, Major-General the Honourable John Ramsay, and lastly General Oglander, 'the good and the brave,' have successively been his friends and supporters. Even in a higher quarter his merits were appreciated in a distinguished manner, he having been selected as aide-de-camp, in 1839, by the Governor of Bengal to accompany Prince Henry of the Netherlands, from Calcutta to Lucknow, Agra, and Delhi.

In May, 1841, he was specially chosen to fill the important and arduous post of Chief Magistrate of Hongkong. Cast, as it were, on the side of a barren mountain, with literally nothing but a mat hut to shield him from the weather, the 'Chief Magistrate' was left to his own resources for 'an establishment.' Without architect or engineer, a suitable gaol, Court House, etc., rose under his indefatigable industry and auspices; and where the wild dog howled three years ago, the houseless stranger, or old friend, now finds a warm and hospitable reception. Frequently did he solicit, during the progress of the war, to be allowed to join his regiment; but the discriminating statesman at the head of affairs in China had found in him a man capable of something more than 'hunting down the long tails.' The subjoined reply to one of his applications, needs no comment; and only requires to be known in the proper quarter to be fully appreciated:—

Ship *Louisa*, off Canton, May 22nd, 1841.

Sir,—With reference to your note of the 19th instant, just received, wherein you request that you may be granted ten days' leave to rejoin your corps during the present operations against Canton, I am directed by the Chief Superintendent to inform you, that he regrets he cannot deem it right to accede to your request. The duties of your office at Hongkong will not permit you to leave that place at a moment when no other officer of the Government is on the spot, and the Chief Superintendent is well assured you must feel with him, that, while in the office you now hold, it necessarily becomes your duty to forego (however painfully) the privilege of being with your corps on any military operations in which it may be engaged.

I have, &c.

(Signed) J. R. MORRISON,
*Acting Secretary and Treasurer.*

Captain CAINE,
*Chief Magistrate, Hongkong.*

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The services of several of those on whom Fortune poured her favours so lavishly in China, would not bear a moment's comparison with those of Major Caine. But, unfortunately, that officer's early achievements were performed in the humble grade of subaltern—a rank, the bright deeds of which, like Sydney Smith's American Bills, have been too often 'repudiated.'"

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Mr. McSwyney removed from the Coronership.

Mr. N. D'E. Parker succeeds him.

The Government had now determined to carry out some reform in regard to the frequent complaints heard latterly in connexion with the administration of justice, and it must have been with some satisfaction that the removal of Mr. McSwyney from the Coronership on the 24th November was received. The Government then "relieved him from that office," and appointed Mr. N. D'E. Parker, in his stead. At this distance of time it seems a wonder even that, after his extraordinary remissness in connexion with the verdict returned by the Jury in the case of the abandoned prostitute noticed in July last,* that the deceased had died by visitation of God and not through the wicked agency of her mistress, when the facts had been so clearly made out, he should have been allowed to continue in the office at all; and the result of the inquest in connexion with the Duncan-Jenkins episode already mentioned had doubtless hastened what, after all, must be looked upon as a dismissal from office. As will be recollected, Mr. McSwyney was originally Deputy Registrar of the Supreme Court, and had resigned office on the 1st May, 1845, on admission to practise as a solicitor.†

* *Antè* p. 101.

† See further in reference to Mr. McSwyney, Chap. XI., *infrà*.

# CHAPTER IV.

## 1846.

The Compton Case.—Appeal against the decision of H. M. Consul at Canton.—Conviction of Mr. C. S. Compton.—He is fined $200 for assault, etc.—Consular Ordinance No. 2 of 1844.—Governor Davis confirms the sentence. His directions to the Consul.—Consular Ordinance No. 5 of 1844.—Consul's proceedings a series of blunders.—Mr. Compton appeals to the Supreme Court.—Consul McGregor's letter to the Registrar.—Consular Ordinance No. 7 of 1844.—Chief Justice quashes the conviction.—The decision.—Local and Home views of the case.—Lord Palmerston's despatch.—Lord Palmerston and British subjects in China.—Result of Mr. Compton's complaint against the Consul and Sir J. Davis to the Home Government.—Opinion of the Law Officers of the Crown upon the Compton Case.—Lord Palmerston's instructions to Governor Davis regarding Mr. Compton's conduct.—Governor Davis' uncalled-for strictures upon the Chief Justice respecting the Compton Case.—Governor Davis as regards the result of the case.—Public interest in the Compton Case.—Resolutions.—Petitions to Houses of Parliament.—Lord Brougham.—Mr. T. Duncombe.—Publication of the papers for presentation to Parliament.—The Compton Case the first appeal to the Supreme Court against a Consular decision.—Charge against the Chief Justice by Governor Davis.

Chap. IV.

The Compton Case.

Appeal against the decision of H. M. Consul at Canton.

Conviction of Mr. C. S. Compton.

He is fined $200 for assault, etc.

Consular Ordinance No. 2 of 1844.

Governor Davis confirms the sentence.

His directions to the Consul.

Consular Ordinance No. 5 of 1844.

Consul's proceedings a series of blunders.

Mr. Compton appeals to the Supreme Court.

Consul Mcgregor's letter to the Registrar.

ON the 26th November there was heard before the Chief Justice an appeal case against the decision of Her Britannic Majesty's Consul at Canton, who, by direction of Her Majesty's Plenipotentiary, had fined a Mr. Charles Spencer Compton, a British merchant at Canton, $200, for kicking over a fruiterer's stall on the 4th July, and beating with a cane a Chinese officer who came out to admonish and stop him, and also with having on the 8th July beaten certain other Chinese and thereby excited the riots and bloodshed which had taken place on the latter day, and in which three Chinese were killed. It was alleged that by Mr. Compton's conduct the peaceful relations between the two countries had been endangered. The fine of $200 was inflicted under the Consular Ordinance No. 2 of 1844 for upsetting the fruit stall on the 4th July, and for pushing aside a Chinaman on the 8th, which, it was stated, led to the riots previously mentioned. Sir John Davis approved and confirmed the fine, but directed that it should be imposed under Consular Ordinance No. 5 of 1844, on the ground that Mr. Compton's conduct was a breach of the treaties with China and, as such, liable to punishment in a summary manner under the last mentioned Ordinance, without the formality of a regular trial by the laws of England. The Consul's proceedings seem to have been a series of blunders from first to last. Mr Compton appealed against the decision of the Consul, Mr. McGregor, to the Supreme Court at Hongkong. In a long letter to the Registrar, dated the 6th November, in forwarding the documents to the Court, Mr. McGregor recapitulated the whole facts of the case, and the appeal eventually

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came before Chief Justice Hulme on Tuesday, the 24th November. Mr. Parker appeared for the Crown, and, in answer to the inquiry of the Chief Justice if he had cause to show why the sentence should not be set aside, replied he had not. After hearing Mr. Coley on behalf of Mr. Compton, who urged that the whole proceeding was irregular and unjust, and that a fair and open trial ought to have been afforded the appellant under the provisions of the Consular Ordinance No. 7 of 1844, as the offence charged was a misdemeanour, the Chief Justice, in a lengthy and well-considered judgment setting forth both facts and law, stated that, apart from considering the sentence unjust, excessive, and illegal, there had been a total disregard not only of the forms of justice but of justice itself, and that the whole case was founded "on assertion on the one side and assumption on the other without any evidence." Accordingly he reversed the sentence imposing the fine of $200 on Mr. Compton. The decision, which further stated that "the whole proceedings had been so exceedingly irregular as to make it necessary to reverse the judgment altogether," seemed inevitable, for probably there never was a case brought before a Court of Appeal with so many legal informalities, and where the ordinary rules of evidence had been so utterly disregarded. The Chief Justice agreed that Mr. Compton had been sentenced under one law and fined under another, which is contrary to all the principles of English justice.*

Consular Ordinance No. 7 of 1844.

Chief Justice quashes the conviction. The decision.

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* In a despatch dated the 25th November, 1846, the day after the final hearing of the appeal, the Governor, Sir John Davis, forwarded a copy of the report of the case, including the Chief Justice's decision, to Viscount Palmerston, and, as will be seen, while admitting that Mr. Consul McGregor "had made mistakes in point of form *which vitiated his sentence*" rather inconsistently if not unfairly animadverted upon the Chief Justice's decision as follows :—

"..... .....the amount of the fine as a penalty must be viewed relatively to the offender's station and means; and in this light, and under the aggravated circumstances of the case, it was not excessive. The only object of the penalty being the prevention of similar violence in future, the Chief Justice must have been aware that any interference with it under present circumstances at Canton must be attended with mischief and danger..... Mr. Hulme has, however, entirely remitted the fine on an appeal from Mr. Compton. This was not the verdict of a jury, but Mr. Hulme's individual opinion and judgment; and I regret extremely it was in his power to interfere. Though I cannot agree that Ordinance No. 5 does not refer to all disputes between Chinese and English, I have been advised to let his judgment have its course, notwithstanding its manifest evils; but some fresh Ordinance will inevitably be required to prevent such mischievous interference in international cases; and with the assistance of the Legislative Council, I propose taking such an Ordinance into consideration.....Enclosed with this despatch is a copy of the report of Mr. Hulme's decision and a copy of the rule. As to the law of the case, Mr. McGregor, being no lawyer, and having (like myself, in the absence of the Attorney-General) no legal adviser, has made mistakes in point of form which vitiate his sentence; and this sentence was not communicated to me until after he had sent it to Mr. Compton. Mr. Hulme suppresses the fact that Mr. Compton provoked the blow of the Chinese by the assault of pushing him aside. He suppresses the fact of the Chinese being seized and tied up, which really caused the riot. He also suppresses the fact of the written warning which Mr. Compton had received only the day before his first act of violence. I hold the highly responsible office of preserving peace between the two countries, and therefore look to Your Lordship for a fair estimate of my motives in desiring to restrain the excesses of the English within the Chinese territories, where the inherent

Local and Home views of the case.

This case, which had absorbed the attention of every one in Hongkong for a long time, and was expected to create quite a sensation in England, upsetting everything and everybody, was received with most provoking indifference at Home. The views expressed in *The Naval and Military Gazette* of the 30th January, 1847, coincided in a great measure with that held by the less-prejudiced and more sober-minded residents of both this Colony and Canton. *The Times* and *The Morning Chronicle* expressed themselves much to the same effect, that violence on the part of Englishmen, regardless of consequences, was to be deprecated, especially when recourse might be had to our consular officials. The local abusive writing on the subject, which was intended for strong, but would have been there considered scurrilous and intemperate language, did not seem to have met with a single response in England.

Lord Palmerston's despatch.

The despatch of Lord Palmerston, to whom Mr. Compton had appealed, appeared fully to approve and confirm the proceedings of the local authorities, and just as explicitly to condemn all that had been alleged in favour of Mr. Compton. By a despatch dated the 24th January, 1847, Viscount Palmerston informed Her Majesty's Plenipotentiary, Sir John Davis, that he entirely approved of his having fined Mr. Compton ;* for he considered it indispensable that British subjects in China should be taught that if, on the one hand, Her Majesty's Government will exact and require from the Chinese that British subjects should be as free from molestation and insult in China as they could be in England, yet, on the other hand, Her Majesty's Government will exact and require from British subjects that they shall in China abstain as much from offering molestation and insult to others as they would if they were in England ; and it never could be tolerated that they should indulge towards the people of China in acts of violence and contumely which they would not venture to practise towards the humblest and meanest individual in their own country.

Lord Palmerston and British subjects in China.

Result of Mr. Compton's complaint against the

On appealing to the Home Government against the conduct of the consular authorities and Her Majesty's Plenipotentiary, Mr. Compton was informed by despatch dated the 11th March,

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rights of the Government have been given up to us. Mr. Hulme's argument will operate I fear, as an encouragement to our people to be violent in a place like Canton, where the elements of mischief are rife. It is with great satisfaction I state that Major-General D'Aguilar, to whom I have read this despatch, requests me to add that he "entirely concurs in every word of it," and that he is prepared, as a member of the Legislative Council, to aid me in providing as much as possible against the chances of evil ....."

* The only point in dispute seemed to have been whether the case came under the Consular Ordinance No. 7 as a common misdemeanour, or, as alleged by Sir John Davis, under Ordinance No. 5, as the cause of a riot and breach of treaty. Now, in his despatch of the 24th January referred to above, one is led to infer that Lord Palmerston in saying that he entirely approved of Sir John Davis having fined Mr. Compton, meant to refer to Ordinance No. 5, but in a despatch No. 31 of the 24th February, referred to further on, he said "that the Law Officers of the Crown had reported to him that in their opinion Mr. Compton might and ought to have been punished under the provisions of the Ordinance No. 7 of 1844."

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Consul and Sir J. Davis to the Home Government.

1847, that Her Majesty's Government entirely approved of the conduct of Sir John Davis, in directing Her Majesty's Consul at Canton to proceed against him, and they regretted that, in consequence of the irregular manner in which those proceedings were conducted, he had escaped the penalty which he would otherwise have incurred. The two despatches in tone and spirit could not have been too much commended, both for their abstract justice and for their practical policy, when such difficult relations have to be maintained as those between this country and China. Mr. Compton had wantonly and offensively provoked some of the inhabitants of Canton, for which Lord Palmerston, in a despatch dated the 24th February, 1847, stated that, in the opinion of the Law Officers of the Crown, he might and ought to have been punished by proceedings in the Consular Court of Canton. Instead of this, he had been proceeded against irregularly, and thus to a certain extent escaped the legal consequences to which he had exposed himself. "Under existing circumstances," continued Lord Palmerston, in the last quoted despatch to Sir John Davis, "no further proceedings are to be instituted against him on account of his conduct, but you are not to offer to him any apology or amends for what has occurred to him." The Governor's uncalled-for strictures upon Mr. Hulme, the Chief Justice, in connexion with his action in the matter, do not appear to have met with any response from Lord Palmerston, though it is but natural to infer that, having regard to the whole facts of this case, perhaps the Governor had reason to be incensed, at the time, at the ultimate result of the proceedings which he himself had directed should be taken against Mr. Compton. This case had excited considerable interest in Canton among the other British merchants, who made it their own in a series of resolutions which were publicly adopted, and forwarded to Government at Home along with Mr. Compton's account of the affair. Petitions also were sent to England to be presented to both Houses of Parliament by Lord Brougham and Mr. T. Duncombe; but, as they were never heard of afterwards, it is to be presumed that Lord Brougham at least was too good a lawyer not to perceive in what consisted the weakness of the petitioners' case. "Papers relating to the riot at Canton in July, 1846, and the proceedings taken against Mr. Compton, a British subject, for his participation in that riot," were afterwards printed and "presented to the House of Commons by command of Her Majesty." These voluminous papers were subsequently reproduced in the local papers and afforded considerable matter for public discussion locally. This was the first case in which an appeal had been made to the Supreme Court from any of the

Opinion of the Law Officers of the Crown upon the Compton Case.

Lord Palmerston's instructions to Governor Davis regarding Mr. Compton's conduct.

Governor Davis' uncalled-for strictures upon the Chief Justice respecting the Compton Case.

Governor Davis as regards the result of the case.

Public interest in the Compton Case.

Resolutions.

Petitions to Houses of Parliament.

Lord Brougham. Mr. T. Duncombe.

Publication of the papers for presentation to Parliament.

The Compton Case the first appeal to the Supreme Court against

duced on a special application. As will be seen hereafter, this case formed the subject of recriminations between the Chief Justice, who had properly refused to be dictated to, and the Governor,* ending in the latter formulating a charge of drunkenness against Mr. Hulme.†

1846. Charge against the Chief Justice by Governor Davis.

* See Chapter VII., *infrà*.

† See Chapter VIII., *infrà*.

# CHAPTER V.

## 1846-1847.

## SECTION I.

## 1846.

Major Caine audits the Registrar's accounts.—Arrival of Mr. C. M. Campbell, Barrister-at-Law, from Calcutta.—His admission to the local Bar.—He is appointed acting Attorney-General during Mr. Sterling's absence on leave.—And a member of the Legislative Council in the room of Major Caine.—Departure of Admiral Cochrane.—Admiral Inglefield.—Transportation of Chinese convicts to Scinde and of other Asiatics to Singapore.—Prosecution of Indian Police for allowing prisoners to escape.—Charge against Captain Greig of the *John Cooper* for assaulting his crew.—Judicial affairs generally in 1846.—Review.

## SECTION II.

## 1847.

Major Caine and Mr. Mercer gazetted Justices of the Peace.—Disregard of public cleanliness; the law of the road; proper lighting of the streets.—Maintenance of door lamps by householders.—Instructions to Police.—Appointments in the Admiralty Court.—First session of the Admiralty Court.—Letters Patent of 10th January, 1846.—Chief Justice's address to the Grand Jury.—Case of Captain Greig, of the *John Cooper*.—Result of the other cases.—Sentence of transportation for life.—Sentence of death.—Acquittal of Captain Greig approved of.—Incapacity of Mr. Hillier.—Subserviency of the Magistracy to the Executive.—The Jury, a protection.—Chief Justice Hulme an upright and independent Judge.—The best guardians of liberty.—Chief Justice Hulme eulogized.—European Police, frequent prosecutions against.—Defective system of recruiting.—Series of prosecutions against Police.—Comment.—Police as Prison warders.—Delinquencies of Police and proceedings before the Police Court.—Public confidence shaken.—Confidence in the Supreme Court.—The new Registration Ordinance, No. 7 of 1846.—Pirates and thieves.—Triad Secret Society flourishing.—Contents of and Police powers under Registration Ordinance.—Based on Chinese principle of mutual security.—Bad characters leaving the Colony.—The Police and the Ordinance.—Mr. S. F. Fearon, Registrar-General and Collector of Chinese revenue.—Appointed Professor of Chinese at King's College, London.—Mr. Inglis appointed to act in Mr. Fearon's place.—Mr. Fearon's inaugural lecture.—Piracy flourishing.—Mr. D. R. Caldwell, Assistant Superintendent of Police.—February Criminal Sessions.—Trivial cases committed.—The Jury complain to the Chief Justice.—The Chief Justice's reply.—Flogging ceases consequent upon Dr. Bowring's motion.—Incapacity of Mr. Hillier.—Reason for sending up paltry cases for trial.—The Chief Justice on the subject.—Mr. Hillier acting under orders of the Executive. Comments. The soldiers and the Police. Case of Privates Connors and Williams.—Military orders anent the Police.—The Chief Justice on military orders and the civil law.—Conviction of the soldiers.—Military authorities deny issuing order that military are independent of the Police.—Public comment.—Actual facts.—Important Civil Cases.—Sir John Davis, rumours of resignation.—Regarding the appointment of a Chief Magistrate.—A legally qualified person desired.—Mr. Hillier's qualifications.—Mr. Hillier partly relieved of his responsibilities.—Lieutenant Wade resigns Chinese interpretership of the Supreme Court.—He is succeeded by Mr. J. M. Marques.—New Rules of Court.

Chap. V § 1.

**Major Caine audits the Registrar's accounts. Arrival of Mr. C. M. Campbell, Barrister-at-Law, from Calcutta.**

On the 2nd December, 1846, Major Caine, Acting Colonial Secretary and Auditor-General, was appointed to audit the accounts of Mr. Cay, the Registrar, under the Ecclesiastical Jurisdiction of the Court, and on the 4th, Mr. Charles Molloy Campbell, barrister-at-law, of the Middle Temple, arrived here by the brig *Anonyma* from Calcutta, having left the latter

place on the 1st November. Under what circumstances he arrived in the Colony, the Court records do not show. It will be recollected that Mr. Sterling, the Attorney-General, had left Hongkong on leave early in September; whether the Government had asked for a *locum tenens* in the meantime or not from the Government of India is not apparent, though that some such step had been taken may be inferred from the fact that Mr. Parker, who was a solicitor, had, after Mr. Sterling's departure, been appointed Crown Prosecutor to carry on criminal prosecutions only, and the local Government was thus left without a legal adviser. Be that as it may, the Court records show that on the 10th December, Mr. Campbell was admitted to practise as a barrister, and on the 14th December, "subject to the pleasure of Her Majesty's Government," he received the appointment of acting Attorney-General during the absence on sick leave of Mr. Sterling, and was also gazetted on that day a member of the Legislative Council in the place of Major Caine, the Colonial Secretary, who, strangely enough, the records say, had resigned his seat in that Council. No doubt his resignation was to make room for Mr. Campbell, though for what reason is not shown.

His admission to the local bar.

He is appointed acting Attorney-General during Mr. Sterling's absence on leave.

And a member of the Legislative Council in the room of Major Caine.

Admiral Sir Thomas Cochrane, who had figured in Court in connexion with the prosecution for libel against the editor of a local paper in June, 1845, took final leave of this Station on the 8th December, proceeding to Singapore by H.M.S. *Agincourt*, there to await the arrival of his successor Admiral Inglefield.

Departure of Admiral Cochrane.

Admiral Inglefield.

In the exercise of the powers vested in him, with the consent of the Home Government and of that of India, the Governor, by proclamation dated the 12th December, announced that Chinese offenders under sentence of transportation would be sent to the province of Scinde in the East Indies, and that Asiatics and other persons not Europeans under similar sentences, would be sent to Singapore in the Straits Settlements. But deportations to Bombay and Singapore had already been effected in August and November of this year.

Transportation of Chinese convicts to Scinde and of other Asiatics to Singapore.

In consequence of repeated complaints against the Police for allowing prisoners when in their charge to escape, on the 28th December, twelve Indian policemen were prosecuted for this offence and fined $3 each.

Prosecution of Indian Police for allowing prisoners to escape.

The Chief Magistrate's Court was occupied several days during December in investigating a serious charge brought against Captain Greig of the *John Cooper*, for violently assaulting his crew with lethal weapons and placing the lives of two of them in jeopardy. Mr. Coley appeared for the prisoner and Mr. Goddard for the men. The charge had been instituted by the authorities, and the case was eventually committed for trial before the new Admiralty Court on the 14th January, 1847.

Charge against Captain Greig of the *John Cooper* for assaulting his crew.

Chap. V § 1.

1846.

Judicial affairs generally in 1846. Review.

The year 1846 was conspicuous for the number of murders committed by natives upon their own countrymen, robbery in many instances being the motive, and in some cases these murders were of a revolting nature, baffling all description. The Government in several cases offered large rewards for the apprehension of the murderers. Though house-breaking and piracy had also been more common, these crimes were, comparatively speaking, of less frequent occurrence than formerly, but other offences had sprung up of far greater enormity in connexion with secret societies especially, but which, as they were not directed against the European inhabitants, attracted comparatively little attention. The number of lawless miscreants had increased, and scarcely a week had passed unmarked by some instance of murder, stabbing, or other aggravated assault chiefly committed by the Chinese, when the Indians or their own countrymen were the victims. How the evil was to be put down had been a matter for grave consideration. The Police Magistrate had suggested, by Government Notification in August, that persons going beyond the limits of the town should not do so alone or without arms. This notice was simply an intimation on the part of the authorities that the residents should find the means to protect themselves beyond the borders of the town, as the Police were unable to assist them ; an open confession of weakness justifying probably the complaints made against the Police during the year. Instead of sanctioning the indiscriminate possession of weapons by the natives and others as the notice previously mentioned practically did, for it was expressed in general terms, it certainly would have been more desirable to have limited the right, and adopted more stringent measures for carrying out the then existing law, rendering it penal in a Chinaman especially to have in his possession any dangerous instrument for which he had no evident lawful occasion or could not satisfactorily account for. The Police case, which Dr. Bowring made the subject of a motion in Parliament, might very well have been suffered under ordinary circumstances to pass unnoticed, and it must have appeared absurd, as some had done, to conjure up pictures of the havoc this form of sentence created among the respectable portion of the Chinese community. Some people professed to be very much shocked at the idea of prisoners being sentenced to be flogged, apparently forgetting that in those very days this mode of punishment was still much practised within Great Britain itself. Even now there is not probably one well-informed person who would not admit the necessity, without any false sentiment whatever, for some such provision as flogging, though it may be, owing to the then condition of affairs, flogging had perhaps been indulged in to

though carrying loss of liberty, are not sufficient deterrents to crime such as one would expect from the lawless hordes who then infested and still infest Hongkong from the mainland. It may be remarked, however, in reference to Dr. Bowring's motion, that it was not even alluded to in the summaries of the London weekly papers and occupied only a few lines in one of the dailies. The subserviency and incapacity of the Magistracy had called forth much public comment, but, having regard to the early condition of the Colony, no doubt some such provision as control by the superior authorities over the minor judicial officers was to some extent necessary, however, objectionable this may have appeared at the time, having regard especially to that very ignorance or want of experience so often displayed and complained of. At all events this subserviency or control rather avoided any possible friction between Government and its inferior judicial employés in relation to ordinary Police matters,—the only jurisdiction they could exercise. The principal object of the Government seems to have been to keep the people as orderly as possible, but when grave errors were committed, as in the case of Mr. McSwyney, the Coroner, the Government do not appear to have hesitated to effect reforms.

Chap. V § I. 1846.

Chap. V § II. 1847.

On the 8th January, 1847, Major Caine and Mr. Mercer, the Treasurer, were gazetted Justices of the Peace for Hongkong, and great disregard having been paid to the provisions of clauses 1 and 7 of section 2, and clause 4 of section 3, of Ordinance No. 14 of 1845, relating to public cleanliness, the law of the road, and the proper lighting of the streets, as for instance, every householder maintaining a lamp before his door, it was notified, on the above date also, that the Superintendent of Police had been instructed strictly to enforce them. At the same time persons ignorant of the "law of the road" were informed that "a horse or carriage, when passing another, should keep the *right*, and when meeting another, the *left* hand side of the road." *

**Major Caine and Mr. Mercer gazetted Justices of the Peace. Disregard of public cleanliness; the law of the road; proper lighting of the streets. Maintenance of door lamps by householders. Instructions to Police.**

Appointments in connexion with the Admiralty Court † having been made sometime before the opening of the Court, these were on the 12th January, 1847, duly published and were as follows: Mr. C. M. Campbell, acting Attorney-General, to be Her Majesty's Advocate in Admiralty; Mr. Robert Dundas Cay, Registrar of the Supreme Court, to be Registrar, and Mr. Charles Gordon Holdforth, the Deputy Sheriff, to be Marshal of the said Court. Mr. Norcott D'Esterre Parker, Solicitor and

**Appointments in the Admiralty Court.**

* "The rule of the road is a paradox quite.
If you go to the right you are sure to go wrong,
If you go to the left you go right."

† See *antè* p. 95.

Chap. V § II. 1847.

Coroner, was also gazetted on the said day as Proctor in Admiralty.

First session of the Admiralty Court.

The first session of the Court constituted, as will be remembered, under Letters Patent of the 10th January, 1846, and published on the 9th May of the same year, was opened on Thursday, the 14th January, 1847, the Chief Justice presiding, assisted by Major Caine, the Acting Colonial Secretary, and Mr. Hillier, acting Chief Magistrate, as Commissioners. Captain Talbot, of H. M. S. *Vestal*, the Senior Naval Officer in command, joined the Commissioners in the course of the day and took his seat on the Bench.

Letters Patent of 10th January, 1846.

The Letters Patent constituting the Court, having been read by Mr. Cay, the Registrar, the Court being held under the law of England and the local Ordinances regulating the Supreme Court not applying, some discussion arose as to who could sit as jurymen, when the Chief Justice decided that only those on the Sheriff's roll could be called. The cases were accordingly submitted to a Grand Jury, the Petty Jury being composed of twelve men. The Grand Jury having been balloted for, and having elected a foreman, the Chief Justice addressed them in relation to the cases before them, as follows :—

Chief Justice's address to the Grand Jury.

"Gentlemen of the Grand Jury,

There are four cases to come before you, none of them requiring any particular explanation. Two of them are against the Captain of a merchant vessel, and the other two are for piracy: all being for acts committed on the high seas. In the case of the Captain, you will bear in mind the power committed to him to enforce discipline among his crew, and it is for you to consider whether or not he has exceeded that power. It is for you to decide whether any or all of these cases require further examination before a Petty Jury."

Case of Captain Greig of the *John Cooper*.

The Grand Jury, after a pretty long deliberation, returned into Court, and reported they had found a true bill in one of the cases (mentioned specially by the Chief Justice in his address quoted above) against Captain Greig. A Petty Jury was then balloted for and the trial proceeded. Some time after, the Grand Jury returned and stated they had found true bills in the other two cases.

Result of the other cases. Sentence of transportation for life. Sentence of death. Acquittal of Captain Greig approved of. Incapacity of Mr. Hillier.

In the case of Captain Greig, who was defended by Mr. Coley, the Jury acquitted him, thinking him, under the circumstances of the case, justified in acting as he did. In the other two cases, the prisoners were all found guilty, being sentenced to transportation for life in the first, and sentence of death being passed in the second. The acquittal of Captain Greig gave great satisfaction. It afforded another instance of the gross incapacity of the committing Magistrate, Mr. Hillier, in having sent such a case for trial, but, despite the follies of the Executive, who had instituted the charge, and under whose direct instructions Mr.

Hillier had acted, the higher tribunal afforded ample protection to all those who were brought before it. A more trumpery case, from all accounts, had never before been brought before any tribunal, the prosecutor breaking down on his own evidence, and the Jury bringing in a verdict for the prisoner without hearing his evidence. The charge apparently arose from a refusal of the prisoner, having regard to the interests of his owners, to listen to the dictates of his crew, who had become mutinous, and allow his ship to remain in an open and dangerous roadstead. Those who were ignorant of the state of affairs in Hongkong might possibly have expressed surprise at such a case having been committed for trial at all, but to the residents, however, nothing came as a surprise, as it was well known that the Magistracy was entirely under the control of Sir John Davis. An intelligent and impartial Jury and an upright and independent Judge, such as Mr. Hulme was, were the best guardians of liberty, and it was deemed a matter for thankfulness, and not unnaturally so under the circumstances, that the community had this protection. The conviction was daily becoming stronger that in the Chief Justice,—considering the independence he had shown on the Bench,—the residents of Hongkong had an invaluable acquisition. This apparently was not spoken in the language of idle compliment, but undoubtedly embodied the sentiments expressed by those who not only had come in contact with Mr. Hulme, both in private and in public, but had had the opportunity of studying him.

Subserviency of the Magistracy to the Executive.

The Jury, a protection.

Chief Justice Hulme an upright and independent Judge.

The best guardians of liberty.

Chief Justice Hulme eulogized.

The European Police, the subject of so much animadversion in the past, and in whom the public reposed so little confidence, were now being prominently brought before the public by the frequent prosecutions instituted against them. Apart from the other elements of which the Police Force was constituted, this showed primarily that the system of recruiting was defective, the European Police being mostly composed of discharged soldiers. Evidently the Government had now decided upon gradually weeding out the bad lot, and the following series of prosecutions instituted in the Police Court, within a short time of each other, early in the year, will give an idea of the utter worthlessness of some of these men :—

European Police, frequent prosecutions against.

Defective system of recruiting.

Series of prosecutions against Police.

*Arthur Robertson*, European P. C.—Sentenced to be dismissed from the Force and to pay a fine of $20 or suffer 10 days' imprisonment for being asleep on his post while *guarding a prisoner under sentence of death*, and for general misconduct.

*Simmon*, Indian P. C.—Charged with assaulting the complainant, who stated that the prisoner had taken some of his cakes, and, when asked for payment, struck him on the forehead with a stone. Fined 10/- to the Queen and 5/- cost to complainant; in default 7 days.

Two other Indian Constables charged five days afterwards, with similar offences, were ordered to be imprisoned for one month and dismissed the Force."

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*John Legg*, European P. C.—Fined $3 for being drunk and using bad language.

*Henry Chorley*, European P. C.—*Stationed at the Gaol*—fined $7 for being drunk and unfit for duty.

*James McGowan.*—Charged with repeated acts of drunkenness—*reported 14 times.* Dismissed the Force.

*James Allen.*—European P. C.—*On duty at the Gaol*—Charged with repeated instances of drunkenness and neglect of duty. Prisoner was incorrigible. He frequently complained of being sick which the Colonial Surgeon stated was the effect of dissipation. Sentenced to forfeit half his pay and to be dismissed the Force.

*Patrick Fulham.*—European P. C.—Charged with being drunk and unfit for duty. To forfeit his pay and fined 5/-.

*James Byrne.*—European P. C.—Found lying drunk under the veraudah of the Police Office. He had been lately very neglectful of his duty, ***and had been reported twelve times for misconduct.*** Fined $10 or one month.

Comment.

These were the men, irrespective of the case against the four European Constables tried at the Criminal Sessions in April following for larceny, to whom the lives and property of the inhabitants had been entrusted. As may be seen from the above compilation, the Police Constables acted in the capacity of warders as well, and it was no wonder that complaints were made in connexion with escapes of prisoners from the Gaol and otherwise.

Police as Prison warders.

Delinquencies of Police and proceedings before the Police Court.

Public confidence shaken.

Confidence in the Supreme Court.

The delinquencies of the Police, and above all the proceedings before the Police Magistrates, had utterly shaken the faith of the people in the purity of the laws and the rectitude of the local rulers. It was true the Supreme Court stood a bright example of a Christian people, and that justice undefiled was there administered alike to the rich and to the poor, to the Christian and to the heathen. But, unfortunately, before the people of Hongkong had been blessed with a Supreme Court, the evil had already been done, and now the proceedings of both Police and Police Court, were not such as to counteract the malign influences of oppression and injustice.

The new Registration Ordinance, No. 7 of 1846.

Pirates and thieves.

The new Registration Ordinance, entitled "An Ordinance to repeal Ordinance No. 18 of 1844, and to establish a more effectual registry of the Chinese inhabitants, and a census of the population of Hongkong," and numbered No. 7 of 1846, was promulgated on the 14th January, 1847, and as an act of legislation it was but a modification of the enactments of its *three* predecessors, though better fitted to effect its object. If energetically carried out, the Ordinance seemed better calculated to gain the desirable end of ridding the island of the swarms of pirates and common thieves who had made Hongkong their chief place of resort, having found probably that with the ignorance of their persons and language they were pretty sure to escape detection.

Here it was that the Triad Secret Society flourished unchecked, Hongkong having become its headquarters for the South of China, and three-fourths of the Chinese population were believed to have been enrolled as members. With such a society flourishing, and with a Police ignorant not only of the habits and haunts of the most active and dangerous portion of its members, but unable to converse with those who did know them, it was not at all wonderful that crime should have been on the increase and its detection become every day more difficult. The new Ordinance contained enactments conferring substantive powers upon the officer charged with carrying its provisions into effect. It was based upon the Chinese principle of mutual security. Householders were registered, having a delegated power to grant certificates to residents under their roofs, for whose good behaviour they were held responsible. This system appeared practicable, and it was hoped would work well, so that the native population would be purged of the scum which, until recently, had made Victoria their city of refuge. For some months past the bad characters had been gradually leaving the Colony, and had established themselves on a neighbouring island. A rigorous enforcement of the new law would effectually check their return, but this duty required to be entrusted to men of discretion as well as principle, as, by section 14 traders and other respectable Chinese visiting the Colony for the purposes of trade were not required to furnish themselves with tickets of registration. It was particularly desirable that such men should not be interfered with or alarmed by the Police, for it was not such a difficult matter after all, in the great majority of cases, for the Police to be able to distinguish between a suspicious character and one who was not. It was known that the able Superintendent of Police, Mr. May, would not protect his subordinates should they show any disposition to extort money from strangers who had not tickets, but as a rule unfortunately there was little faith in the men, many of whom were known to be bad and to have had too much practice at all events in the old squeezing system.

Triad Secret Society flourishing.

Contents of and Police powers under Registration Ordinance. Based on Chinese principle of mutual security.

Bad characters leaving the Colony.

The Police and the Ordinance.

Mr. Samuel Fearon, the Registrar-General, who had proceeded on leave of absence in July, 1845, and who on the 30th January, 1846, had been gazetted in London as "Registrar-General and Collector of Chinese Revenue for Hongkong," received in December, 1846, the appointment of Professor of Chinese Language and Literature in King's College, London. On his appointment, Mr. Inglis, who had been acting for Mr. Fearon, since his departure in July, 1845, was appointed in his place subject to Her Majesty's pleasure. Thus one of its earliest officials severed all connexion with the Colony. On the 20th April,

Mr. S. F. Fearon, Registrar-General and Collector of Chinese Revenue. Appointed Professor of Chinese at King's College, London. Mr. Inglis appointed to act in Mr. Fearon's place.

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Mr. Fearon's inaugural lecture.

Mr. Fearon delivered his inaugural lecture, before a numerous audience, including several of the most distinguished members of the Council of the College, amongst whom were Sir George Staunton, Lord Radstock, and Sir Robert Harry Inglis.

Piracy flourishing. Mr. D. R. Caldwell, Assistant Superintendent of Police.

In the neighbourhood of the Colony, piracy was still being carried on with the same undaunted defiance, and almost with the same impunity, especially on the native shipping, but since the appointment of Mr. R. D. Caldwell, whose knowledge of the Chinese language and means of acquiring information of their plans and schemes as Assistant Superintendent of Police, it was anticipated that, if not altogether suppressed in the immediate locality, the villains would at least receive a check and be more frequently brought to justice.

February Criminal Sessions. Trivial cases committed.

A Criminal Sessions of the Supreme Court was opened on the 15th February, 1847, and continued its sittings for four days, and, as latterly had been the case, the Court was chiefly occupied with the trial of some paltry cases, consisting mostly of petty larcenies and other trifling offences that should not have been sent to a Jury: so undeniable was this, that the Jury addressed the Chief Justice complaining of being called away from their business to dispose of trifling cases which might well have been disposed of by the Magistrates. The Chief Justice replied he would do all in his power to remedy the evil complained of. What the committing Magistrates were about, could not be imagined—at times they would commit for the most trifling offences and at others dispose of most serious ones, apparently with every confidence in their own powers. The system of flogging so long practised in the Magistracy had now altogether ceased in consequence of the exposure in the House of Commons by Dr. Bowring. It was a fact that before this, many cases of a serious and aggravated nature which should have been committed for trial had been disposed of in the Police Court by the offenders being sentenced to be flogged, in addition to fine and imprisonment, and latterly, since flogging had been denounced, the most petty and ridiculous charges had been sent to the Supreme Court. The incompetency of Mr. Hillier, the acting Chief Magistrate, was beyond conception, convictions in cases of mere suspicion being quoted, and it was feared that in troubling the Supreme Court with the number of paltry cases he had recently sent up, he had been influenced by feelings not very creditable, namely, that he, no longer being allowed to flog, committed cases with the object of obtaining heavier sentences. However, the Chief Justice was determined to put a stop to this, and disposed of all minor cases in a summary manner by fine or imprisonment. As Mr. Hillier acted under

The Jury complain to the Chief Justice.

The Chief Justice's reply.

Flogging ceases consequent upon Dr. Bowring's motion.

Incapacity of Mr. Hillier. Reason for sending up paltry cases for trial.

The Chief Justice on the subject. Mr. Hillier acting under orders of the

was blamed for submitting to the dictum of any one so long as he was on the bench. By doing so, he degraded the civil law and rendered it subservient to the Executive Government. It was the glory of a free people that the Government had no control over the Judges of the land, and if they had, it was but the disgrace of nepotism.

The soldiers and the Police. Case of Privates Connors and Williams.

In one of the trials at this Sessions, two soldiers of the 18th Regiment, named Thomas Connors and James Williams, were accused of riot and assault in the house of John Cockrill, landlord of the Commercial Inn, on the 5th December, 1847. The Police had refused to interfere when first asked for assistance, but the riot becoming rather serious, one of the inspectors went to the spot and arrested the two men. It appeared in evidence that "the soldiers called out that they might do as they pleased; that according to the orders they had received in the barracks, the bloody Peelers had nothing to do with them." The Police corroborated the assertion by stating that they had received orders to that effect. The Jury returned a verdict of guilty. In passing sentence, the Chief Justice remarked that "it was a most extraordinary opinion that any order from a Commanding Officer could exempt a soldier from being amenable to the civil law." Both Judge and Jury, however, were satisfied that such an order had been given. The soldiers were sentenced to be imprisoned for twelve months.

Military orders anent the Police.

The Chief Justice on military orders and the civil law.

Conviction of the soldiers.

Military authorities deny issuing order that military are independent of the Police.

Public comment.

Actual facts.

On the 24th February, the Assistant Adjutant-General addressed a letter to the Colonial Secretary, in which he said:— "I am directed to acquaint you, for the information of His Excellency the Governor, that the statement attributed to certain soldiers of the 18th Regiment, as regards the issue of an order declaring them to be independent of the Police, is wholly without foundation." This denial rather mistified the public, it being clear from the concurrent evidence of the Police and the soldiers, that information had been conveyed to them, and that the Police had been told not to interfere with the military. Truth is not easily hid, and in this instance it forced its way to the light. It appeared that no general order had actually been issued, but that the General had made a speech (with the best intention no doubt) to the Regiment, and which had evidently been misconstrued, intimating that "the Police had received orders not to trouble them, provided they did not trouble the Police," and thus ended another of those petty storms which so often burst forth in the earlier days of the Colony, without doing much harm, however, to those most concerned in raising them.

Important Civil Cases

The records of this month disclose some important civil cases

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Sir John Davis, rumours of resignation.

Regarding the appointment of a Chief Magistrate.

A legally qualified person desired.

Mr. Hillier's qualifications.

Mr. Hillier partly relieved of his responsibilities.

The resignation of Sir John Davis began now to be generally talked about, and it was hoped, if true, that his resignation would bring about other changes "equally desirable." Upon this point there was, however, no certainty, but the appointment at least of a Chief Magistrate, in succession to Major Caine, legally qualified to perform the onerous duties of his office, was anticipated. With the repeated complaints that had been made from time to time as to the mode of dispensing justice at the Magistracy, this was considered indispensable, and it was thought that no one more than Mr. Hillier himself realized that fact, for, according to a Government Notification published on the 1st March, His Excellency the Governor "acceded to Mr. Hillier's request of resigning the office of Sheriff, Provost Marshal, and Marshal of the Admiralty Court," and appointed Mr. C. G. Holdforth, the acting Assistant Magistrate since June, 1846, to perform those duties, pending Her Majesty's pleasure. This left Mr. Hillier more leisure for his magisterial work; but, as will be seen hereafter, though relieved of a considerable portion of his responsibilities, the public were not satisfied with him.

Lieutenant Wade resigns Chinese interpretership of the Supreme Court.

He is succeeded by Mr. J. M. Marques.

Lieutenant Wade, having intimated his desire to be relieved from the duties of Interpreter of the Supreme Court, which appointment he received on the 6th April, 1846, the Governor was pleased to accept his resignation, and in his capacity of Her Majesty's Plenipotentiary, on the 1st March, Sir John Davis appointed Mr. Wade to be Assistant Chinese Secretary and Interpreter, Mr. Jozé Martinho Marques being appointed in Mr. Wade's place as "one of the Interpreters to the Government and Interpreter and Translator to the Supreme Court."

New Rules of Court.

The new Rules of Court regulating the sittings of the Supreme Court, practice and pleading, proceedings in *formâ pauperis*, criminal proceedings, and the fees to be taken in the Court, and by attorneys, solicitors and proctors practising therein, dated the 1st March, having been duly approved of by the Legislative Council on the 11th of that month, were published on the 1st April. They were further approved of and confirmed by Her Majesty, by Proclamation of the 16th September, 1847.

# CHAPTER VI.

## 1847.

The House of Commons and British commercial relations with China.—Select Committee appointed.—Evidence of Lieutenant-Colonel Malcolm.—Reason why Hongkong was selected.—Report of the Select Committee.—Flogging and cutting off of 'queues' or tails of Chinese in addition to sentences.—Colonel Malcolm's evidence and opinion of effect of 'tail-cutting' upon Chinese.—'Tail-cutting' in the Prisons introduced by Mr. Campbell, acting Attorney-General.—No authority given by local law for 'tail-cutting.'—Ordinance No. 10 of 1844, s. 25. Ordinance No. 15 of 1844, s. 3.—'Tail-cutting' unknown to Chinese usage.—Testimony of Mr. A. Matheson before Select Committee as to 'tail-cutting.'—His evidence and opinion as to excessive flogging and fines in the Police Court.—'Tail-cutting.' Authorities shave off place where 'tail' was.—Respectable Chinamen dreading to come to Hongkong.—The quasi-tax on prostitutes and the Committee.—The exposure of the infamy.—Serious charges against the Police.—The tax an arbitrary exaction.—No longer collected after appointment of Parliamentary Committee.—Mr. Matheson and the contribution by the prostitutes.—System no check upon immorality.—Evidence of Captain Balfour.—He eulogizes Major Caine and Mr. Hillier and the latter for his knowledge of Chinese.

Chap. VI.

The House of Commons and British commercial relations with China.

Select Committee appointed.

Evidence of Lieutenant-Colonel Malcolm.

Reason why Hongkong was selected.

Report of the Select Committee.

On the 23rd March, in the House of Commons, on the motion of Lord Sandon, after a few words from Mr. Hastie, a Select Committee was appointed to inquire into the condition of our commercial relations with China. The noble lord made a few observations on the state of those relations, but deemed it unnecessary to go into the subject at length, as the motion was not to be opposed. Subsequently, the evidence of several gentlemen connected with the Colony was taken before the Committee. The following evidence of Lieutenant-Colonel Malcolm, who was Secretary of Legation under Sir Henry Pottinger, affords a complete view of the motives from which Hongkong was selected. It is taken from the Report of the Select Committee mentioned above :—

"*Chairman*.—What position did you occupy during the late war in China and the negotiations which brought it to a conclusion?—I was Secretary of Legation. I went out with Sir Henry Pottinger in 1841; I remained there till the treaty was made in 1842; and I was there for five months in 1843 as Colonial Secretary and Secretary for Legation.

Will you state what led to the selection of Hongkong as the place to be stipulated for a possession of the British Crown?—In the first instance it was chosen by Captain Elliot from the fineness of the harbour, and from his thinking it a very eligible station for ships to refit at..... It was the best situation near Canton.

In choosing Hongkong, we evidently were not seeking a territorial hold upon China?—No; we only wanted to have a place where our people could have refuge, where our ships could refit, and where persons in authority could live under the British flag, to save them from being insulted as our officers had been before; as Lord Napier and Captain Elliot had been: whereas if you

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have an insular position you are protected ; you have your foot upon English ground.....the population of Hongkong was about 5,000 when we took possession.

Flogging and cutting off of 'queues' or tails of Chinese in addition to sentences. Colonel Malcolm's evidence and opinion of effect of 'tail-cutting' upon Chinese.

Corporal punishment, of which so much had been heard, and the cutting-off of the 'queues' or tails of the Chinese in addition to the sentences inflicted upon them, also formed the subject of inquiry. The following examination of Colonel Malcolm upon this matter was conducted by Dr. Bowring whose name had now become familiar to most people connected with Hongkong. Colonel Malcolm's opinion upon the subject of Chinese 'tail-cutting,' as may be seen hereafter, was not singular :—

*Dr. Bowring.*—Was corporal punishment, or cutting off the tails of the Chinese, inflicted while you were there?—Corporal punishment was ; but I never heard of cutting off tails.

Would not that operate very unfavourably to the Chinese?—Cutting off the tails is a very serious matter ; *it is branding a man at once with infamy.*

'Tail-cutting' in the Prisons introduced by Mr. Campbell, acting Attorney-General. No authority given by local law for 'tail-cutting.' Ordinance No. 10 of 1844, s. 25. Ordinance No. 15 of 1844, s. 3. 'Tail-cutting' unknown to Chinese usage.

As will be seen later on, the system of cutting off the tails of Chinese, at all events as a prison regulation whenever it had not been ordered as an additional punishment of an offender, was an innovation introduced by Mr. Campbell, the young and inexperienced barrister who was appointed in December last by Sir John Davis to act as Attorney-General after the departure on leave of Mr. Sterling. Under no law of the Colony was such a punishment sanctioned. Section 25 of Ordinance No. 10 of 1844, and section 3 of Ordinance No. 15 of 1844, which sanctioned the punishment of offenders according to Chinese usage, made no mention of cutting of tails, and certainly amongst the Chinese themselves such a mode of punishment did not exist. As a prison regulation it can therefore only be classed amongst the numerous eccentricities of which the above-mentioned youthful Attorney-General was guilty, during the time he held acting judicial positions of trust in the Colony. The following extract is from the testimony of Mr. Alexander Matheson before the same Committee. Mr. Matheson did not hesitate to give it as his opinion that respectable Chinese dreaded the idea of coming to Hongkong and run the risk of having their tails cut off for some offence or other. His evidence as to flogging and fines in the Police Court will also be found interesting. In answer to questions put by the Chairman, he said he considered "the fines and fees in the Magistrate's Courts excessive." He had known poor Chinamen fined five dollars and ten dollars each, who did not earn perhaps above six dollars a month or perhaps not so much, and who were flogged or imprisoned or had their tails cut off in the event of

Testimony of Mr. A. Matheson before Select Committee as to 'tail-cutting.'

His evidence and opinion as to excessive flogging and fines in the Police Court.

Matheson said that the Chinese alone were flogged; he never heard of a British subject having been flogged. To Dr. Bowring's question as to whether the cutting of the tails was not a most ignominious offence, Mr. Matheson replied "that it was, and very often had the effect of making a man, who might be otherwise disposed to mend, to continue a rogue. The authorities were not satisfied with cutting the tail off, *but shaved off the place where the tail was.* If they left a little bit of hair they could tie on a fresh tail, *but they shave off the roots as well as cut the tail away.* He had no doubt it drove many to desperation and made robbers and thieves of them." Mr. Hawes.—"Are they or are they not generally rather desperate characters that are brought to the Police Courts there?"—I have known very respectable men brought there—"And subject to this punishment?"—"Not perhaps subject to that; but respectable men have been taken to the Police Court for being found "without a ticket; without being registered." In answer to Mr. Moffat's question what had happened upon such occasions, Mr. Matheson said he believed some of them had their tails cut off, and he knew that many respectable Chinamen objected to going to Hongkong *under the dread of such a thing happening to them.*

'Tail-cutting.' Authorities shave off place where 'tail' was.

Respectable Chinamen dreading to come to Hongkong.

Nor was the subject of the various modes of punishment alone discussed before the Committee. The quasi-tax on prostitutes was also gone into. The exposure of this imposition, ostensibly for the upkeep of a hospital in connexion with these unfortunates, it will be remembered, formed the subject of serious charges against the Police in March, 1845,* when even Major Caine's conduct was brought into question. The subject was a delicate one. The women referred to paid monthly subscriptions of one and a half dollars each, and this system had been in existence for about two years. The laws of England neither sanctioned the licensing of iniquity and the raising a revenue from it, nor indeed its recognition in any form, unless it was to draw its victims from its vortex. The tax itself was an arbitrary exaction, totally opposed to British law and principles. The funds were partly expended on an hospital into which the patients themselves would rather not enter, preferring their own doctors and medicines. But a small part only of the funds were so laid out, and the Police were the tax-gatherers, but no one knew who was the recipient of their collections and to what member of the Government the recipient accounted for the funds, especially since Major Caine had refused to have anything more to do with the matter. One good result, however, was the appointment of the Parliamentary Select Committee of Inquiry,

The quasi-tax on prostitutes and the Committee. The exposure, of the infamy. Serious charges against the Police.

The tax an arbitrary exaction.

No longer collected after

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appointment of Parliamentary Committee.

for since its inception, the tax had ceased to be collected. It was thought that probably Sir John Davis had deemed it advisable at once to disallow any connexion of the Government with the tax, in regard to which, however, there was no denying some of the Government officials had been closely associated in one form or another. In reply to questions by Mr. Hawes, Mr. Spooner, Mr. Moffatt, and Dr. Bowring, all members of the Committee, Mr. Matheson stated that there was no doubt in the Colony that "each house of ill-fame paid five dollars a month and each woman one dollar" as a contribution "in aid of Police expenses," and that there was at one time "some hospital maintained by the Government out of this source of revenue, though whether it was still carried on or not he did not know." In answer to Dr. Bowring, Mr. Matheson replied that he did not think this system was in any way a check upon the public immorality in Hongkong. Another important witness heard by the Select Committee, was Captain George Balfour of the Madras Artillery. He had formerly been British Consul at Shanghai and spoke of the improvements he had noticed in connexion with Police work, due in great measure, he thought, to Major Caine and Mr. Hillier. He said :—

Mr. Matheson and the contribution by the prostitutes.

System no check upon immorality.

Evidence of Captain Balfour. He eulogizes Major Caine and Mr. Hillier, and the latter for his knowledge of Chinese.

"I must state that I was surprised to find the improvements which had taken place at Hongkong in the Police administration, when I passed through Hongkong last October, that is, between the time I left it in 1843 and my return in 1846. Of the two gentlemen at the head of the office during that period, one whom I have known since my arrival in China, Major Caine, is a very efficient officer, of great distinction, and has long been entrusted, both in India and China, with very confidential employments ; the other, Mr. Hillier, whom I have also known for some time, is a zealous officer, and has well qualified himself for the performance of his Police duties by acquiring the Chinese language."

# CHAPTER VII.

## 1847.

Disallowance of Rules of Court by Home Government.—Ordinance No. 15 of 1844.—Ordinance No. 6 of 1845, s. 23.—Expedition to Canton.—Departure of Governor Davis and Major-General D'Aguilar with the Expedition.—Major Caine, Commandant of Hongkong.—Success of the Expedition.—Return of troops to Hongkong.—Fear of disorder in Hongkong during absence of troops.—Police precautions.—Meeting of Triad Secret Society.—Consular Ordinance No. 1 of 1847.—Withdrawal of appeal to Supreme Court of Hongkong against Consular decisions.—The Compton Case.—Governor Davis had asked the Chief Justice to confirm the sentence.—The Chief Justice disregarded the wishes of Governor Davis.—Governor Davis and his attitude towards the Canton merchants after the reversal of the decision.—Governor Davis asked for powers to prevent appeal from Consular Courts.—Governor Davis' instructions to Consul McGregor.—Ordinance No. 1 of 1847.—British subjects deprived of right of appeal to the Supreme Court.—Ordinance No. 6 of 1844.—Ordinance No. 1 of 1847. Powers of the Superintendent of Trade thereunder.—Consular Ordinance Nos. 1, 2, and 6 of 1844.—Liberties and prospects of Englishmen at mercy of unqualified men.—April Criminal Sessions.—Sentences of death.—Four European Police sentenced to imprisonment for larceny.—Sitting of the Vice-Admiralty Court.—The Chimmo Bay piracies.—A convict Too Apo receives a free pardon and gives evidence in the case.—He becomes a piracy approver.—His infamous conduct afterwards.—Comments upon the last sitting of the Vice-Admiralty Court.—Unfortunate disagreement between the Governor and the Chief Justice.—The Governor and the Chief Justice hold different Courts.—Discussion between them afterwards.—Governor Davis threatens to suspend the Chief Justice.—He questions the right of the Chief Justice to be styled 'Lord.'—Petty spite.—The reason.—Public opinion.—Heavy work in the Supreme Court.—Major Caine confirmed as Colonial Secretary and Auditor-General.—Nothing known as to his successor.—Mr. Hillier considered not qualified.—Eulogistic article in the *Dublin University Magazine* on Major Caine.—Major Caine's conduct in relation to Chief Justice Hulme's suspension.—The effect of Dr. Bowring's motion in the House of Commons against flogging in Hongkong.—Flogging as regards the criminal population.—Effect of substitution of imprisonment for flogging.—Convict Sinclair pardoned.—Original sentence of transportation could not be carried out.—Reason.—Mr. Shelley appointed Assistant Auditor-General of Mauritius.—Publication of certain provisions relating to the government of Her Majesty's subjects in China.—Queen's Order-in-Council of 17th April, 1844.—Act 6 and 7 Vict.—Consular Ordinance No. 7 of 1844.—The Compton Case.—Regina *v.* Larkins.—Charged with breach of Post Office Regulations.—Strange verdict of the Jury.—Authorities censured.—Admiral Cochrane.—Admiral Inglefield.—Frauds by Major Caine's compradore.—Payments to him by the leaseholders of the Central Market.—He used Major Caine's name.—Mr. W. Tarrant reports the extortion to the Government.—Committee of Inquiry appointed.—Prosecution of Mr. Tarrant and Afoon for conspiracy to injure character of Major Caine.—Mr. Tarrant's defence.—Major Caine's compradore absconds.—Land. Complaints as to land tenure and high Crown rents.—The Government of India pass Act xi of 1847 authorizing transportation to the Straits Settlements from Hongkong.—Tenders for passage of 61 convicts to Penang.—The ship *General Wood* and the mutiny of convicts.—Ordinance No. 6 of 1847. Summary Jurisdiction of Police Magistrates and Justices of the Peace extended.—Encroachment upon the powers of the Supreme Court.—Police Court inspires no confidence.—A legally qualified Chief Magistrate desired.—Lord Brougham's Act.—No hope of amelioration under Sir John Davis.—Futile appeal to the Chief Justice for amelioration of affairs.—Governor Davis leaves for Cochin China.—Major-General D'Aguilar acts.—Sessions of the Vice-Admiralty Court.—Chief Justice complains to the Jury that he has not been allowed to see the indictments.—Sir John Davis' vindictiveness.—Mr. Hillier confirmed as Chief Magistrate.—Public surprise and comments.—Ordinance No. 6 of 1847.—Rapid promotion of Mr. Hillier and to what it was due.—Chief Justice no hand in the matter.—Mr. Hillier a zealous officer.—His merits recorded.—His illegal sentences of whipping.—Action pending against him.—Ordinance No. 6 of 1847.—Ordinance objectionable as the Chief Magistrate unfit for the duties imposed.—Real object of Ordinance an encroachment upon Supreme Court.—Comments upon Mr. Hillier's qualifications.—His submissive acquiescence to the wishes of the Execu-

Ordinance No. 6 of 1847, s. 5, authorized 60 stripes.—October Criminal Sessions. Heavy Calendar.—The case against Mr. Tarrant and Afoon postponed at request of Mr. Campbell, acting Attorney-General.—Mr. Coley, for Mr. Tarrant, objects.—The Chief Justice upon the point.—Trial postponed.—Return of Governor Davis from Cochin China.—Complaints against Mr. Holdforth, the Sheriff.—He withdraws 'Sheriff's Sales' from Mr. Markwick, the Auctioneer, and gives them to Mr. Duddell.—Improper motives assigned.—The ship *General Wood*.—Mutiny of the transported convicts.—The convicts break loose on leaving Singapore.—Panic and murder of officers, etc.—They take possession of the ship and compel the crew to work.—They run upon a reef.—European passengers on board.—Rescued by Malay Chiefs.—Blame attributed to Hongkong authorities.—H. C. S. *Plegethon* sent after the convicts.—Those captured.—Conduct of captured convicts on board the *Phlegethon*.—Their trial at Singapore.—The Recorder's summing up.—Extraordinary verdict of the Jury.—Sentence of death recorded.—Sentence of transportation.—Recorder's comments on the verdict.—No military guard on board the *General Wood*.—Due precautions not taken on board.—Insurance on the vessel disputed.—European Constable Thompson pardoned.—Soldiers also pardoned.

Chap. VII.

Disallowance of Rules of Court by Home Government. Ordinance No. 15 of 1844. Ordinance No. 6 of 1845, s. 23.

By Government Proclamation, dated the 26th March, 1847, it was announced that the Home Government had disallowed certain Rules of Court before alluded to herein, dated the 11th November, 1844; the three rules of the 13th January, 1845; the general rule of Easter term, 1845; and the rules of Michaelmas term, 1st November, 1845. Under what powers, and for what reason, it was necessary to submit these rules to the Home authorities for approval or otherwise, and however anomalous, is not apparent. Suffice it to say that the Supreme Court Ordinances No. 15 of 1844 and No. 6 of 1845, s. 23, gave no such directions.

Expedition to Canton.

The repeated insults offered to our countrymen, and the restrictions upon their privileges, seemed to have at length convinced the Home Government of the expediency of adopting a more decided course in dealing with the Chinese. In consequence of the evasive and unsatisfactory conduct of the Chinese Minister, Her Majesty's Plenipotentiary communicated with the General, and determined with him on the necessity of proceeding, with the co-operation of the Navy, with a force to Canton to demand certain points on which he had been instructed to insist, by Her Majesty's Government. Accordingly, on the 1st April, it was ascertained that an expedition to Canton was intended, and the impression was, that Sir John Davis was about to demand some important concession—either the residence of an ambassador at Peking or the immediate entrance to the City of Canton,—the justice of the latter demand having been admitted by the Imperial Commissioner a year ago. Some other matters also called for redress. Early on the morning of the 2nd April, Sir John Davis and Major-General D'Aguilar embarked and the vessels sailed. With the concurrence of the Governor, the General gladly availed himself of the services of Major Caine, and appointed him Commandant of Hongkong during the absence of the General and the main body of the troops on service at Canton, and the Governor also appointed Major Caine to administer the Government during "the temporary absence of himself and the Lieutenant-Governor."

Departure of Governor Davis and Major-General D'Aguilar with the Expedition. Major Caine, Commandant of Hongkong.

The expedition was singularly successful and the results were best appreciated by those who had marked the course of former negotiations with the Chinese when we were met at every step with affronts, evasions, and delays. Even the Pottinger treaties had not secured us against them, so far at least as Canton, the principal seat of commerce, was concerned. After the expedition had fulfilled its object, on the 8th of April, the troops embarked and returned to Hongkong. It was feared at one time that, during the absence of the fleet and of the main body of the Forces, Hongkong would be attacked and plundered, but besides the military precautions it would appear that the Police arrangements were equally efficient, the Force being scattered all over the town to prevent any assemblage of Chinese, and to watch such suspicious persons as might be seen lurking about.

Return of troops to Hongkong.

Fear of disorder in Hongkong during absence of troops.

Police precautions.

Mr. Caldwell, the Assistant Superintendent of Police, having received information of a meeting of the Triad Society being held at Wong-nei-chung for the purpose of planning an attack on the town, proceeded in that direction, and observed groups of men, amounting to about two hundred, coming down the hill. Seeing one of them with a wound on the eye and blood on his jacket, he stopped him and found in his pocket two books of the Triad Society. This man, together with several others, was arrested and afterwards ordered to furnish security.

Meeting of Triad Secret Society.

Early in the year, the Governor, as Superintendent of Trade, passed the Consular Ordinance No. 1 of 1847 which took from British subjects the right of appeal to the Supreme Court in cases of Consular Jurisdiction. It will be remembered that, in November last, Mr. Compton had appealed against the decision of the Consular Court at Canton. Sir John Davis had had the audacity and bad taste to write to the Chief Justice telling him in other words that it would be highly inconvenient to the Government if Englishmen were to be allowed the benefit of law and justice in China, and *asking him to confirm the sentence.* The reversal of the sentence, notwithstanding this appeal, seems to have galled Sir John Davis extremely, and it was evident that so long as the Chief Justice took an independent view of the discharge of his judicial duties and disregarded the wishes of the Governor, the petty oppressions of Consular ignorance would not be repeated and the Consular officers and the Superintendent of Trade himself kept within the bounds of established law. But this was intolerable to Sir John Davis, whose animosity towards the merchants of Canton had become so noticeable since the Compton case. Thwarted in his unworthy attempt to tamper with the Judge and to coerce the residents, he wrote Home to Lord Palmerston denouncing the merchants

Consular Ordinance No. 1 of 1847. Withdrawal of appeal to Supreme Court of Hongkong against Consular decisions.

The Compton Case. Governor Davis had asked the Chief Justice to confirm the sentence. The Chief Justice disregarded the wishes of Governor Davis.

Governor Davis and his attitude towards the Canton merchants

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after the reversal of the decision. Governor Davis asked for powers to prevent appeal from Consular Courts.

as a lawless and turbulent community, and asking for powers to prevent an appeal from the Consular Courts. In his despatch of the 25th November, 1846, after unfairly commenting upon the decision of the Chief Justice. and regretting his interference in "international cases," it will be remembered that he had said that "some fresh Ordinance was inevitably required to prevent such mischievous interference" * in future, and after obtaining the powers he asked for, a plausible opportunity now offered to deprive those under the jurisdiction of the Consular Courts of the protection of the Supreme Court of Hongkong. Accordingly, such an opportunity was now laid hold of after our relations with China and the security of foreigners at Canton, had been settled. After returning to Hongkong, Sir John Davis wrote to the Consul, Mr. McGregor :—"It will be your duty to control British subjects in accordance with the expressed views and intentions of Her Majesty's Government, and my late Ordinance No. 1 of 1847 *has strengthened your hands in a manner which leaves nothing wanting.*" This perfection of legislation strengthened the hands of the Consuls by depriving British subjects of the right of appeal to the Supreme Court as provided by Ordinance No. 6 of 1844. Englishmen were thus placed without the pale of English law. Ordinance No. 1 of 1847 gave the Consul jurisdiction in all cases "which shall not appear to him to deserve a greater punishment than 12 months' imprisonment or a fine of $500," the Superintendent of Trade having power to remit or mitigate the punishment. Sir John Davis thus usurped the privileges of the Supreme Court as was provided for by the Consular Ordinances Nos. 1, 2, and 6 of 1844, and, ignorant of law as he confessed himself to be, he would now adjudicate upon points involving the most important interests, and thus the liberties and prospects of Englishmen be at the mercy of men who were professedly unfit for their position. The Ordinance, moreover, was constitutionally improper and had been passed without the customary suspending clause. So much for the boasted liberty of the subject.†

Governor Davis' instructions to Consul McGregor. Ordinance No. 1 of 1847. British subjects deprived of right of appeal to the Supreme Court. Ordinance No. 6 of 1844. Ordinance No. 1 of 1847. Powers of the Superintendent of Trade thereunder. Consular Ordinances Nos. 1, 2, and 6 of 1844. Liberties and prospects of Englishmen at mercy of unqualified men.

April Criminal Sessions. Sentences of death. Four European Police sentenced to imprisonment for larceny.

The April Criminal Sessions of the Supreme Court opened on the 15th of that month. The calendar was light compared with the previous sessions, but some of the cases were serious; four men were sentenced to death for murder and robbery and four European Police Constables accused of larceny in a junk in the harbour, on board of which they had been placed as a guard, were sentenced to twelve months' imprisonment. One of these, Charles Thompson, received a free pardon on the 12th November, but for what reason is not apparent.

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* *Antè* Chap. IV., p. 116.

† Upon the subject of Consular decisions, see further Chap. XII., and XIV., *infrà*, and Volume II., Chap. XXXIX. and XLII.

Sitting of the Vice-Admiralty Court. The Chimmo Bay piracies.

A Vice-Admiralty Court was held on the 20th April, according to notice. There were twelve cases for trial, and the Grand Jury found true bills in all, the most important cases being those connected with what was known locally as the Chimmo Bay piracies, when the captains, officers, and part of the crews of the ships *Caroline* and *Omega* were murdered. From information received, Mr. Caldwell, the Assistant Superintendent of Police, took into custody several men at different times on suspicion, but the legal evidence against them was incomplete until one of the gang was seized by the Chinese Magistrates at Canton for other crimes and, being subjected to torture, confessed his participation in the Chimmo piracy; other disclosures were none the less remarkable. For the assistance rendered by a prisoner named Too Apo in connexion with this matter, and who had turned Queen's evidence, Too Apo, who had but recently been convicted of robbery and sentenced to transportation, received a free pardon and was released on the 19th April, the day before the opening of the Vice-Admiralty Court, which thus enabled this "infamous" witness to appear in Court and give evidence in a different garb than he would otherwise have done. Upon the conclusion of the cases, Too Apo was taken on in the Police as a piracy approver. How he contrived afterwards to deceive the authorities and to turn his infamy into account will be seen later on. Apart from this incident, some appeared to be called for, in regard to the proceedings at the above Sessions of the Vice-Admiralty Court. There were a dozen cases to try, the sittings commenced on Tuesday, the 20th April, and for the Thursday following, the 22nd, the sittings of the Supreme Court in its summary jurisdiction had already been fixed, so that in reality twelve cases had to be disposed of in two days. Owing to some blunder in framing the indictments, five cases fell through, and the Chief Justice, having regard to the state of the business, had previously communicated with the Governor as to the unsuitable date which he (the Governor) had fixed for the holding of the Vice-Admiralty Court, but to no purpose, the Governor insisting, for some unknown reason, upon the latter Court being held on the 20th, although the 22nd had been previously fixed for the Summary Jurisdiction.

A convict Too Apo receives a free pardon and gives evidence in the case.

He becomes a piracy approver. His infamous conduct afterwards.

Comments upon last sitting of the Vice-Admiralty Court. Unfortunate disagreement between the Governor and the Chief Justice.

In accordance with the Governor's orders, therefore, the Vice-Admiralty Court was opened on due date, but the Chief Justice continued to hold the Criminal Sessions, which had not yet concluded, the Governor presiding at the Vice-Admiralty Court. Later on, the Chief Justice joined the Governor on the bench of the latter Court, when it was understood that some unfortunate disagreement had arisen

The Governor and the Chief Justice hold different Courts.

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between them, but one can infer from what has preceded that the fact of the Chief Justice continuing to hold the Criminal Sessions while the Vice-Admiralty Court was being held by Sir John Davis, was one of the topics of discussion between them. In the course of this discussion it was understood that the Governor had threatened to suspend the Chief Justice,—the right of the latter to be addressed as "His Lordship" being, moreover, called into question by him. Tomlin's Law Dictionary was referred to under the head of *Dominus*, and it was there found that the "Lord Chief Justice" was specially mentioned as entitled "Lord" by courtesy. Naturally, this matter did not escape criticism, and Sir John Davis' right, except by a similar courtesy, to be styled "His Excellency" was itself afterwards discussed. But all this petty spite on the part of the Governor, as will be seen afterwards, was only the commencement of a series of persecutions on his part, in consequence of the Chief Justice's refusal to allow himself to be improperly dictated to in connexion with the Compton Case before alluded to, and wherein Mr. Hulme had upset the Consul's conviction though requested privately by the Governor to uphold it. It was considered that Sir John Davis' *dodge* of trying "to ride in upon the merchants" in Canton (allusion being doubtless had to his references to them in connexion with the case of Mr. Compton) was now "to *ride over* the Court." This was the result, it was said, of putting power into hands unfitted to wield it.

Discussion between them afterwards.

Governor Davis threatens to suspend the Chief Justice.

He questions the right of the Chief Justice to be styled 'Lord.'

Petty spite.

The reason. Public opinion.

"*England's* broad wing hath raised him (no bad back)
A tom-tit twittering on an eagle's back."

Heavy work in the Supreme Court.

The Chief Justice also sat in summary jurisdiction on the 22nd and 23rd April, as announced. A vast amount of labour was thus thrown upon him and the officers of the Court, and had not the acting Attorney-General broken down in five of his cases, it was almost certain that the Admiralty Court would have taken several days, and the consequence would have been the postponement of the small debt Court to the greater or less inconvenience of the suitors.

Major Caine confirmed as Colonial Secretary and Auditor-General.

Nothing known as to his successor.

On the 23rd April, a despatch was received from Home, confirming the appointment of Major Caine to the joint offices of Colonial Secretary and Auditor-General, an amalgamation effected last November as before mentioned. Nothing was known as to Major Caine's successor, and the wish was again expressed, and not unnaturally so, as may well be imagined, that a thoroughly competent man would be found for this post. Mr. Hillier's qualifications did not fit him for the position, and there were other offices for which he was qualified.

Mr. Hillier considered not qualified.

Eulogistic

recollected, spoke highly of the merits of Major Caine, and in addition to his services, as noticed in November last year, *The Dublin University Magazine* for July, 1847, in an article upon Hongkong and some of its officials also, had the following eulogistic paragraph with regard to Major Caine:— Chap. VII. 1847. *University Magazine* on Major Caine.

"MAJOR CAINE."

"There is a member of the Colonial Government who, in the general estimation, is one of the few in authority perfectly qualified, in every respect, to govern, command, and enforce respect—possessing that suavity of manner, and hospitality of disposition, which has obtained for him the universal esteem of the mercantile body, and of all who have the pleasure of his acquaintance. Experience has taught him the true character of the Chinese. His *unflinching firmness*, and his *just* and *impartial conduct* on the bench, produced such an effect upon them, that one word from him is sufficient to secure their respect and attention. Those who know China will have anticipated the name of Major William Caine, the Chief Magistrate of Hongkong. When I first anchored in Victoria harbour, I was much struck with the estimation in which this gentleman was held. Not being understood by some Chinese who came on board, when I asked "Who is the Governor here?" I changed the form of the inquiry, and asked "Who is the great man?" The immediate reply was "Major Caine." They knew nothing of Sir Henry Pottinger, nor of Sir John, then Mr. Davis. On many occasions I have tried various Chinamen, and questioned them about the Governor, or No. 1 Mandarin, but they knew nothing of Sir John Davis!—while I have invariably found the name of Major Caine sufficient to deter them from extortion or insolence."

Major Caine's conduct in relation to Chief Justice Hulme's suspension.

Judging from the records, this was by no means an exaggerated account, but Major Caine's conduct taken in connexion with the suspension of Chief Justice Hulme in November of this year, however much he may have been the tool of Sir John Davis, will ever remain a blot in his official career in Hongkong. He undoubtedly was aware of the antipathy which Sir John Davis entertained for the Chief Justice and the reason for it, and yet supported the former in his infamous attempt to ruin, without any reason, the character and reputation of an upright, independent, and conscientious judge, and no honourable man under the circumstances could think otherwise than that Major Caine's conduct in the matter was highly reprehensible and undignified.

The effect of Dr. Bowring's motion in the House of Commons against flogging in Hongkong.

Flogging as regards the criminal

The case respecting the sentences of flogging brought before Parliament by Dr. Bowring in August, 1846, as might have been expected, broke down, and though the exposure appeared to have had the effect of almost entirely stopping corporal punishment, it only resulted, doubtless after due inquiry, in the issuing of fresh instructions from Home to resume the practice. Flogging was by no means considered unsuitable to

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reason, especially having regard to the sanguinary and merciless despotism with which it had been practised. In the Police Court on the 27th April, a labourer accused of being a rogue and vagabond, and with stealing a piece of wood, was sentenced to receive twenty-five strokes of the rattan. This was believed to have been the first sentence of whipping inflicted for some considerable time. Under ordinary circumstances this case would probably have gone to swell the list of cases committed for trial. So far the community had been obliged to Dr. Bowring, since the substitution of imprisonment for flogging, instead of checking crime, had encouraged it by holding out at worst the prospect of house room, regular meals, and light labour to idle rogues and vagabonds, besides crowding the gaol and throwing on the Supreme Court many petty cases which might have been much better dealt with by the Magistrate in a summary way. But though flogging had been resumed as a necessary punishment in such a community as this, it was hoped that more discretion and discrimination would be exercised in future than had been displayed in the past, and the sentence recorded above, compared with the past, gave one the idea that this would be so.

Effect of substitution of imprisonment for flogging.

Convict Sinclair pardoned. Original sentence of transportation could not be carried out. Reason.

Henry Daniel Sinclair, convicted of piracy and sentenced to transportation for life in June, 1845, and who together with others had effected his escape from prison in July, 1846, being shortly afterwards re-captured, received a free pardon on the 29th April, 1847. Apart from the fact that probably he had now been considered sufficiently punished, doubtless his release was partly due to the fact that it had not been found practicable to carry his original sentence into execution, inasmuch as, since the cancellation of the Order mentioned in March, 1844, authorizing transportation to Van Diemen's Land, no other place had since been substituted for the reception of such convicts.

Mr. Shelley appointed Assistant Auditor-General of Mauritius.

Mr. Shelley, Clerk of Councils, who had arrived in the Colony in 1844, and who on several occasions had acted as Hindustani Interpreter to the Supreme Court, was now appointed Assistant Auditor-General of Mauritius.

Publication of certain provisions relating to the government of Her Majesty's subjects in China. Queen's Order-in-Council of 17th April, 1844. Act 6 and 7 Vict., Cap. 80. Consular Ordinance No. 7 of 1844.

Under instructions from the Home Government, the Governor, as Her Majesty's Plenipotentiary and Chief Superintendent of Trade, caused the Queen's Order-in-Council of the 17th April, 1844,* published under the Act 6 and 7 Vict., Cap. 80, "An Act for the better government of Her Majesty's subjects resorting to China," † to be re-published on the 28th May, 1847, as well as the Consular Ordinance No. 7 of 1844, which related to the same subject. This was done, as will be noticed, after

* *Antè* p. 43.

the hearing of the Compton Case, and evidently with the idea that these enactments sufficiently known.

The Compton Cases. Regina *v.* Larkins.

The case of the Queen *versus* Larkins, which had excited considerable local interest, came on for hearing on the 2nd June, before Chief Justice Hulme and a special jury. Captain Larkins was proprietor of the steamer *Corsair* plying between Hongkong and Canton, and was charged with having, during twelve months from February, 1846, to March, 1847, carried letters not excluded from the exclusive privileges of the Postmaster-General. The penalty provided by Statute was either five pounds for each letter or one hundred pounds for every week the practice was continued. The Crown claimed the latter, amounting to £5,200. The Jury found the defendant guilty of one breach of the Statute, thereby rendering him liable in a single penalty of £100, recommending a remission of the fine on the ground that the defendant was rendering a public service, and accompanying their verdict with a censure of the authorities for having permitted the system to go on so long (upwards of a year) unchecked—a remark very proper in itself, but rather strangely appended to a verdict which found that the offence had been committed during one week only.

Charged with breach of Post Office Regulations.

Strange verdict of the Jury.

Authorities censured.

H.M.S. *Agincourt*, which had left Hongkong in December, 1846, with Admiral Cochrane on board, left Penang for England at daylight on the 15th April, in company with H.M.S. *Wolf*. In the evening Admiral Inglefield hoisted his white flag at the mizen of the *Nemesis* under a salute from H.M.S. *Dædalus* and the Penang Fort, remaining in Penang for a time and arriving in Hongkong on the 24th July, to assume command of the squadron.

Admiral Cochrane.

Admiral Inglefield.

In June, 1847, some disclosures were made relative to certain frauds committed by the compradore in the service of Major Caine, and it was hoped that this would help to check the system of fraud and extortion which had so often been entailed upon official transactions in the Colony. It was asserted that Major Caine's compradore for a considerable period had induced the leaseholders of the Central Market and others to pay him moneys to obtain his master's good-will. Had the man practised extortion in his own name the crime would have been less heinous, but he used the name of his master, thus bringing the character of public officers into disrepute among the Chinese. Mr. William Tarrant, for several years employed in the Surveyor-General's Office, brought these charges of extortion to the notice of the Government on the 3rd July. The charges implicated in a minor degree the compradore of the Treasury. The Governor at once appointed a Committee of Inquiry consisting of Mr. Campbell, the acting Attorney-General, Mr. Hillier, the acting Chief Magistrate, and Mr. Caldwell, Assistant Superintendent

Frauds by Major Caine's compradore.

Payments to him by the leaseholders of the Central Market. He used Major Caine's name.

Mr. W. Tarrant reports the extortion to the Government.

Committee of Inquiry appointed.

Prosecution of Mr. Tarrant and

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Afoon for conspiracy to injure character of Major Caine.

Mr. Tarrant's defence.

Major Caine's compradore absconds.

of Police and Chinese Interpreter. The result of the inquiry, as reported upon by Mr. Campbell, ended in the prosecution of Mr. Tarrant, who was committed for conspiring to injure the character of Major Caine and held to bail to take his trial at the October Sessions, together with one Afoon, he also being concerned in the alleged conspiracy. Mr. Tarrant denied that he had wished to injure the reputation of Major Caine; that on the contrary he considered he was doing him a good service by exposing the knavery of a person in whom he had placed confidence. In the meantime, a most suspicious element in the case, Major Caine's compradore had levanted from the Colony!

Land. Complaints as to land tenure and high Crown rents.

Complaints having arisen from the landowners in regard to the land tenure of the Colony, and the high Crown Rents, it was, after much consideration, represented to the Secretary of State, first by Sir John Davis and afterwards by Governor Bonham* that the extension of the term of 75 years on which the lands of the Colony were then held, or the grant of the lands in perpetuity, would be accepted as a boon by the merchants. The complaints of the landowners had reached the House of Commons, and a Select Committee of that House, it will be remembered, was appointed to investigate the commercial relations with China and the state of Hongkong.†

The feelings of the landowners with reference to the land sales and land tenure appears in an article in *The Friend of China* newspaper, of the 24th July, 1847, as follows:—

"The land sale of January, 1844,§ with all its injustice will at length be brought to light; but whether it will lead to any reduction of the present rates of ground rent is doubtful. We are in hopes that justice will be done so far as refers to the land tenure, by giving those who have built substantial tenements a more permanent title than a lease for seventy-five years. It certainly was not the intention of Her Majesty's Government that at the expiration of the lease the land *and buildings* should be put up to public competition. As the proprietor is bound to keep the property in an efficient and habitable state, it would be unfair that the houses he built should be sold to another. Such things have happened, however, as witness the sale of January, 1844, at which grants with improvements were sold to the highest bidder, to the discredit of the then existing Government. The odium of these sales will rest upon Sir Henry Pottinger and his advisers, and the unscrupulous manner in which he seized upon private property will not add to his reputation. We are satisfied that though instructions were received not to alienate the land, the same despatch provided for a clause, by which the lease should be renewable for a further period. Though the language is *purposely ambiguous*, this is admitted by Sir Henry Pottinger in his letter to the landholders, dated the 6th March, 1844. We quote the passage,—'looking to the instructions from England, *although it has not been considered that a positive stipulation on the subject could be introduced into the Leases*, yet Her Majesty's Government will be moved to place on record that it shall be understood that at the expiration of the present leases, the offers of the occupants of the different premises shall have a preference over all

* See Chap. X. and XI., *infrà*.

† *Infrà* Chap. VI.

§ See Chap. I., *antè* p. 36.—Also on the same subject, Chap. III., *antè* p. 71.

others, and that they shall be allowed to renew their leases on favourable terms for such further period as may then be deemed just and expedient.' Mark the words, 'it has not been considered that a positive stipulation on the subject could be introduced into the leases.' Whose opinion was this? The opinion of Sir Henry Pottinger and his legal adviser!—certainly not; the opinion of the advisers of the Crown. The instructions Sir Henry refers to did, in all likelihood, provide for a 'positive stipulation' that the leases should be renewed, on the same terms; but Sir Henry Pottinger entertained the opinion that at some future period building allotments in Hongkong would become immensely valuable, and therefore he did not consider 'that a positive stipulation could be introduced into the leases.'

Sir Henry Pottinger wished to secure to the Crown any increase in the value of land at the expiry of seventy-five years, upon which the present holders built expensive and substantial houses believing that their title would be in perpetuity. Sir Henry did not perceive *all* the injustice of this measure, or he would have hesitated before he sanctioned, or rather adopted it. He says—'Her Majesty's Government will be moved to place on record etc.' But what evidence is there of such a record? and seventy-two years hence how are the occupants to prove its existence except by the loosely-expressed paragraph we have quoted? The leases would have been the proper place to have recorded this, but they are silent on the subject. Supposing the record duly made and admitted, it is not enough that the occupants should have a preference in renewing the leases. Justice demands more than this. If others are willing to pay a higher ground rent, it should be stipulated that they take the buildings at a fair valuation. This may not have occurred to Sir Henry Pottinger, but it is so reasonable that few will dispute it. It is hard enough that those who first came to the Colony—or rather their heirs—should be deprived of every possible advantage which may accrue from an increased value in land that ought to have been their own; but if they are to be deprived of their houses, or compelled to re-purchase them, it will be a gross violation of justice.

It is doubtful whether this point will be brought to the observation of the Committee, as even here, Sir Henry Pottinger's letter and its admissions appear to have been forgotten. Should the matter be overlooked, it will then remain with the landholders, either to submit to the sacrifice of their property, or respectfully petition Her Majesty in Council, that a clause be endorsed on the leases to the effect, that they will be renewable on the present terms, or, if again put up to competition, that the proprietors be re-imbursed for improvements."

The Government of India pass Act xi of 1847 authorizing transportation to the Straits Settlements from Hongkong.

On the 7th August, the Government of India passed the Act No. XI. of 1847, authorizing the Governor of Prince of Wales' Island (Penang), Singapore, and Malacca to receive in the said Settlements convicts "who had been duly sentenced to transportation by any competent Court" in Hongkong. In pursuance of the said Act, the Governor directed, on the 23rd September, that any offender convicted in the Colony and being under sentence or order of transportation, be sent by the earliest opportunity to the said Settlements. In August and September, the local Government had advertized for a passage to Penang for sixty-one convicts, and these undoubtedly were the men who, with others added to their number, on departure from Hongkong in November, mutinied and captured the vessel on

Tenders for passage of 61 convicts to Penang.

The ship

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Ordinance No. 6 of 1847. Summary jurisdiction of Police Magistrates and Justices of the Peace extended.

Ordinance No. 6 of 1847 extending the summary jurisdiction of Police Magistrates and Justices of the Peace in Hongkong "with a view," as the preamble stated, "to diminish the number of prisoners from time to time in gaol, and to lessen the expense attending the detention of Crown witnesses," passed the Legislative Council on the 9th September. The measure was considered in some quarters as an encroachment upon the powers of the Supreme Court; but, be that as it may, the Magistrate's Court inspired less confidence than ever, and the new Ordinance made matters worse. No news had yet been received of a successor to Major Caine, and with the passing of such an important Ordinance as above, it was again suggested that none but an experienced and legally qualified person should be appointed to the Chief Magistracy. Such legal qualifications were required at Home, and Lord Brougham's Act provided that no person shall be eligible for the position of Chief Magistrate who had not five years standing as a barrister. The public, however, had no hope of any amelioration in the Magistracy under the rule of Sir John Davis, but, with his knowledge of local affairs, it was hoped that the Chief Justice would set his face against an Ordinance which gave the Executive any control over the law Courts, and rendered the community amenable to the judgment of men who were confessedly unacquainted with the laws of the country,—a very futile appeal in all conscience having regard to the relations between the Chief Justice and the Governor!

Encroachment upon the powers of the Supreme Court.

Police Court inspires no confidence.

A legally qualified Chief Magistrate desired.

Lord Brougham's Act.

No hope of amelioration under Sir John Davis.

Futile appeal to the Chief Justice for amelioration of affairs.

Governor Davis leaves for Cochin China.

Sir John Davis left the Colony for Cochin China on the 6th October, 1847, in H. M. S. *Vulture*, Captain MacDougall, accompanied by H. M. sloop of war *Ringdove*, Captain Clifford. His visit was understood to have relation to the then existing commercial relations with Cochin China. During his absence, Major-General D'Aguilar assumed the reins of the Government.

Major-General D'Aguilar acts.

Sessions of the Vice-Admiralty Court.

Chief Justice complains to the Jury that he has not been allowed to see the indictments.

Sir John Davis' vindictiveness.

A sessions of the Vice-Admiralty Court was held on Friday, the 8th October. There were eight cases on the list, and the Grand Jury found true bills in all of them. In his charge the Chief Justice stated that "he had not been allowed to see the indictments,"—a most extraordinary statement which under any circumstances could not but appear unjustifiable and which at this distance of time can only be traced to Sir John Davis' vindictiveness to Mr. Hulme. Mr. Parker obtained the postponement of one case on the ground of the shortness of the notice of trial served upon the prisoners, and the acting Attorney-General, Mr. Campbell, suffered another slip through his fingers, by a flaw in the indictment, in having laid the stolen property as belonging to two parties, whereas the first witness for the prosecution distinctly swore that there were four partners each

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with an equal interest in it. The Chief Justice took the opportunity of suggesting that the ends of justice would not have been defeated had attention been paid to what had occurred in a former case of the same description, when by omission of the words "and others" the prisoners escaped. Nothing further transpired at this session calling now for observation.

Mr. Hillier confirmed as Chief Magistrate.

No greater surprise could have come upon the public than the announcement, on the 19th October, 1847, in the official paper, that a despatch had been received from the Secretary of State "confirming the appointment of Charles Batten Hillier, Esquire, to that of Chief Magistrate of Hongkong." This came as a bolt upon the public from the clouds. Undoubtedly the service was small, and the selection limited, but, as had often been pointed out before, there were other offices for which Mr. Hillier was qualified. It had been repeatedly represented that for a position such as that under consideration, even at this early stage of the Colony, a properly qualified lawyer and a gentleman of experience was required, and more so than ever since the passing of Ordinance No. 6 of 1847 relative to the jurisdiction of the Magistrates. But with Sir John Davis, public opinion counted for little and as is apparent it was only necessary to oppose him in any matter, for him to show more obstinacy. Mr. Hillier first joined the Government as Assistant Magistrate under Major Caine in June, 1843, previous to which he had been in the merchant service, so that after only four years service he had now reached the highly honourable and responsible position of Chief Magistrate, without any qualifications whatever except a knowledge of Chinese acquired in a comparatively short time. Such rapid promotion in modern times is quite exceptional, but Mr. Hillier owed this to his devotion and unswerving subserviency in things in general, to Sir John Davis and his immediate chief Major Caine.* However that may have been and however manifestly unfair to the community in many respects—certainly Mr. Hulme, the Chief Justice, had had no hand in the appointment—one thing the records disclose all through, and that is, that there existed no more zealous and energetic officer at the time in the Government service than Mr. Hillier. Whether in the Magistracy or as regards the Police, Mr. Hillier had ever been to the fore and ready to help in whatever way he could, and as to the Police, he had occasionally shown much activity and rendered good service, though upon the bench he appears often to have

Public surprise and comments.

Ordinance No. 6 of 1847.

Rapid promotion of Mr. Hillier and to what it was due. Chief Justice no hand in the matter.

Mr. Hillier a zealous officer. His merits recorded.

* A strange confession of this is to be found many years after in the evidence given by Major (then Colonel) Caine in his case against Mr. Tarrant for libel. He said "*Mr. Hillier was almost like a child of my own.*" See evidence of Colonel Caine in the libel

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adjudicated upon matters wherein in reality he himself was the prosecutor, and, be it said, not often to the advantage of the prosecuted; and though not one word is to be found in his favour, to say the least, in connexion with his confirmation as Chief Magistrate of Hongkong, it is as well that his merits should be recorded here. The Government had evidently taken time to think over his appointment, for although Major Caine was confirmed as Colonial Secretary in April, it was not till now that Mr. Hillier received his; but it may be that a great deal in regard to him had depended upon the disclosures made to the Select Committee of the House of Commons, and it will be remembered that Captain Balfour, formerly Consul in Shanghai, and who had known Mr. Hillier for some time, had stated in reference to the latter that he had known him as "a zealous officer who had well qualified himself for the performance of his police duties by acquiring the Chinese language." * Coupled with the strong recommendation of Sir John Davis, Mr. Hillier was therefore confirmed. He certainly came within the meaning of "the few in authority perfectly qualified" mentioned in *The Dublin University Magazine* of July, 1847, quoted in connexion with Major Caine.† His illegal sentences of whipping alone would not bear recapitulation, leaving aside the fact that, at the time of his recommendation to the honourable position he now held, he was under threat of an action in damages for illegal arrest, and practical *deportation* in connexion with the two Portuguese gentlemen extradited to Macao in August, 1846.‡ This action first came into Court in April, 1848, as hereinafter mentioned; but this was one of the many cases in which Mr. Hillier had but obeyed superior orders. Contemporaneously with his confirmation as Chief Magistrate, the Ordinance No. 6 of 1847, previously alluded to, extending the jurisdiction of the Police Magistrates and Justices of the Peace, was promulgated. It enabled the Magistrates to dispose of all the petty larceny cases, and thus relieved the Supreme Court of about half the arduous duty of the Criminal Sessions. So far this was an improvement, but the Ordinance itself was objectionable inasmuch as the Chief Magistrate was unfit for the responsible duties it entailed upon him, even though he acted under instructions from the Governor. The real object of the enactment, however, was an encroachment upon the Supreme Court by the assumption of judicial power by the Executive, to whose control the Chief Magistrate tamely submitted. Without going into the provisions of the Ordinance itself, it was necessary to inquire whether under

His illegal sentences of whipping.

Action pending against him.

Ordinance No. 6 of 1847.

Ordinance objectionable as the Chief Magistrate unfit for the duties imposed.

Real object of Ordinance an encroachment upon Supreme Court.

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* *Antè* Chap. VI., p. 134.

Comments upon Mr. Hillier's qualifications.

the usual limitations of a Magistrate's Court, and if untrammelled by an adherence to the dictates of his superiors, Mr. Hillier was qualified for an appointment which required an extensive acquaintance with the common and statute law of England. It was sufficiently well known that Mr. Hillier had never studied law even in a subordinate capacity; his decisions afforded ample evidence of the fact. Upon these grounds his appointment was objectionable in ordinary police proceedings; but when he had a criminal jurisdiction equal to that of a Court of Quarter Sessions with a Jury in England, people may well have been apprehensive of the consequences. Adding to this his submissive acquiescence to the wishes of the Governor, it became clear that judicial power was grasped by the usurping hands of a weak and partial Government, tottering under legislative and executive duties which it was too infirm to control. It was essential in an upright Magistrate that he should be free from any influence whatever, otherwise his Court was corrupt, the laws violated, and the people oppressed. That Mr. Hillier acted under advice of the powers that be was beyond question, and this was never more emphasized than in the case of the two Portuguese before noticed. A Magistrate who defers to the will of another is a person to be held in dread as dangerous to the community.*

His submissive acquiescence to the wishes of the Executive.

A Magistrate deferring to the will of another.

Vagrant paupers hunted up and flogged, etc.

Disgusting sight.

Some of the culprits lepers.

On Saturday, the 23rd October, the Police hunted up about a dozen paupers. In the afternoon, according to sentence, the miserable creatures were *flogged* near West Point and landed on the opposite shore. The sight was described as disgusting in the extreme, some of the culprits being lepers and other beggars whose faces were by no means unfamiliar to many. Afflicted and miserable, borne down by disease, these were certainly not the men who had rendered the island insecure. It was no doubt difficult to deal with such people, but, on the other hand, if their presence was sanctioned at any time, this place would simply be inundated with them, though it would appear that while such creatures were in reality being harshly used, others of the most infamous character went about unmolested. Surely, flogging was not an appropriate punishment for such vagrants as those described, and some milder measure of punishment might have been adopted, but flogging had now been resumed, and to carry it out was apparently determined upon. Thus the opinion, formed in April last, that probably with more discrimination and less cruelty, sentences of whipping might not prove

Flogging again discussed.

* The first maxim of a free state is, that the laws be made by one set of men, and administered by another; in other words, that the legislative and judicial characters be kept separate. When these offices are united in the same person or assembly, particular laws are made for particular cases, springing oftentimes from partial motives, and directed to private ends: whilst they are kept separate, general laws are made by one body of men, without foreseeing whom they may affect; and, when made, must be applied

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so dreadful after all, proved futile. Indeed, the new Police Court Ordinance No. 6 of 1847, s. 5, authorized corporal punishment to the extent of "60 stripes, to be inflicted with a cane or rattan," with the addition that persons unable to give a satisfactory account of themselves were liable, if unregistered, to be sent out of the island.

Ordinance No. 6 of 1847, s. 5, authorized 60 stripes.

October Criminal Sessions. Heavy Calendar.

The Criminal Sessions of the Supreme Court, which began on Saturday, the 23rd October, closed on Wednesday, the 27th. There were 48 cases on the Calendar, the most important one of which was that of Mr. Tarrant and Afoon accused of conspiracy to injure the character of Major Caine, as mentioned in June last.* When the case was called, the acting Attorney-General, Mr. Campbell, who had advised the Government in connexion with the matter,† moved for a postponement on the ground that a material witness, Major Caine's compradore, was absent from the Colony. He produced an affidavit to that effect, but it did not disclose that any attempt had been made to secure his attendance, though it was well known that the man was residing near Canton, having prudently withdrawn from the jurisdiction of the Court.

The case against Mr. Tarrant and Afoon postponed at request of Mr. Campbell, acting Attorney-General.

Mr. Coley, for Mr. Tarrant, objects.

Mr. Coley, on behalf of the accused Tarrant, said that Afoon was not at first included in the charge. He had, on the contrary, been examined as a witness against Mr. Tarrant, but, apparently because he had not gone far enough and given such evidence as was wanted of him, he was afterwards included in the charge and made a defendant. Lo In Tin, Major Caine's compradore, was not examined as a witness either in the Magistrate's Court or in the other inquiry that was held before. He had absconded after charges had been made against him, and it was not probable he would return.

The Chief Justice upon the point.

The Chief Justice observed that at least the witnesses who had given evidence before the Magistrate who had committed Mr. Tarrant for trial, were known: that the affidavit was practically of no use, as it did not show that any endeavour had been made to secure Lo In Tin's attendance, and only stated that he was absent, but he thought that no obstacle should be thrown in the way of clearing up a somewhat mysterious case by forcing an immediate trial, and he therefore further postponed it on the assurance of the acting Attorney-General that his witness would be present at the December Sessions.

Trial postponed.

Return of Governor Davis from Cochin China. Complaints against Mr. Holdforth, the Sheriff. He withdraws 'Sheriff's

On the 30th October, the Governor, Sir John Davis, resumed duties on his return from Cochin China.

Complaints against the Sheriff, Mr. Holdforth, were now formulated in regard to his treatment of Mr. Markwick, the Government Auctioneer, who had heretofore conducted the 'Sheriff's Sales,' and from whom these were now withdrawn by Mr. Hold-

forth, and given to a Mr. Duddell. Mr. Markwick had received his appointment in the early days from Major Caine when Sheriff, and was also the Appraiser and Auctioneer to the Supreme Court on its ecclesiastical side, and no just reason having been assigned by Mr. Holdforth for withdrawing his sales from Mr. Markwick, except of being able to do as he chose, improper motives, in the absence of any apparent cause, were said to lie at the bottom of the change, and as events proved afterwards, having regard to Mr. Holdforth's conduct in other matters, the surmises were not altogether wrong. The records of 1848 and 1850, it will be seen, speak amply upon the subject.*

Sales' from Mr. Markwick, the Auctioneer, and gives them to Mr. Duddell. Improper motives assigned.

On the 6th November, 1847, the ship *General Wood* left Hongkong for Penang with ninety-two convicts on board and confined in a prison built on the lower deck. On her arrival at Singapore, this prison was taken down to make room for a cargo of sugar, and the prisoners were removed to small spaces abreast the main and after hatches, where, for want of other means of securing them, a chain was rove through their leg irons, the key being entrusted to the sepoy who kept watch over them. The vessel sailed from Singapore on the morning of the 2nd January, 1848, and anchored the same evening off the Carimas. A little after midnight the convicts broke loose and took possession of the ship, several of the officers and others being either killed or, through being panic-stricken, throwing themselves overboard. Having taken full possession of the ship, one of the convicts undertook to pilot them back to China. They accordingly slipped the cable and with the assistance of some of the lascar crew, whom they compelled to work, made sail, but very soon lost all notion of the course they were steering, and at last after twenty days' sailing in different directions, ran upon a reef about nine miles from the North Natunas. The vessel carried several passengers from Hongkong, including Lieutenant and Mrs. Seymour and Mr. Farquhar. They, with several of the lascars and as many of the Chinese convicts as the ship's boat would hold, steered for Pulo Laut, and had not proceeded above half way to the island when they saw the ship go off the rocks and go down head foremost, carrying with her all those who had remained on board waiting the return of the boats. The unfortunate passengers met with kindness from the Malay chiefs who conveyed them to Bungoran, the "*Orang Kya*" † there directing the headmen of the different islands to secure the other convicts should they attempt to land, and to forward them to Bungoran also. Much blame was attributed to the authorities in Hongkong for having put the convicts on board without a guard or any means of securing them. It was a fact that these

The ship *General Wood*. Mutiny of the transported convicts.

The convicts break loose on leaving Singapore. Panic and murder of officers, etc. They take possession of the ship, and compel the crew to work. They run upon a reef.

European passengers on board.

Rescued by Malay Chiefs.

Blame attributed to Hongkong authorities.

* See Chapters X and XII, *infra*.

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ninety-two convicts, many of them known to be desperate ruffians, were put on board without even a pair of handcuffs, and that Captain Stokoe (who had slipped over the ship's side during the panic after the convicts had broken loose, and thus got drowned) finding this to be the case, had positively refused to sail until he had been supplied with these, and that after waiting two days, the Sheriff furnished him with only fifty pairs of handcuffs for ninety-two convicts.

H. C. S. *Phlegethon* sent after the convicts.

The authorities in Singapore, on hearing of the mutiny, immediately despatched H. C. S. *Phlegethon*, to Pulo Obi, near the entrance to the Gulf of Siam, to ascertain the whereabouts of the convicts. There a large number of the men were afterwards captured, a card case and work box containing a note addressed to one of the ladies, who was a passenger on board the *General Wood*, being found in the village. On the return passage of the *Phlegethon* to Singapore, some of the captured convicts were actually overheard inciting the others to master the crew and capture the vessel. Two jumped overboard, one of whom was drowned, while another tried to hang himself. A supplementary Criminal Sessions was held at Singapore on the 18th and 19th May, 1848, for the trial of the prisoners captured. Sixteen of the convicts, also the Chinese carpenter and two Chinese sailors of the *General Wood*, were charged with having seized the vessel, and caused the death of Captain Stokoe and his officers. The indictment contained three counts charging them with "piratically assaulting Captain Stokoe, the commander, and several others, and with having piratically, violently, and feloniously taken the ship." The trial lasted three days; the Recorder summed up the evidence in a speech of four hours' duration, and the Jury having retired about 6 p.m., at half past 11, brought in the astonishing verdict of "guilty but without violence," with a rider recommending several of the culprits to mercy. This verdict naturally excited considerable comment and, as an excuse, some of the Jury stated afterwards that they had misunderstood the explanations of the Recorder. The Court met on Saturday at noon when sentence of death was directed to be recorded against the whole of the prisoners. Five of them, viz., the carpenter, the two Chinese sailors, and two of the convicts who appeared to have taken an active part in the affair, were sentenced to be transported to Bombay for life. The Court took further time to determine what should be done with the others. In passing sentence the Recorder made some strong remarks on the verdict of the Jury, to which he said, although he could not arrive at the grounds on which they had formed their opinion of the case, he was bound to endeavour to

Those captured.

Conduct of captured convicts on board the *Phlegethon*.

Their trial at Singapore.

The Recorder's summing up.

Extraordinary verdict of the Jury.

Sentence of death recorded.

Sentence of transportation.

Recorder's comments on the verdict.

ed against all the prisoners on the first count, yet he felt so hampered by the verdict of the Jury, that he could not allow that sentence to be carried out. His Lordship hoped that his thus acting on what he believed to be the constitutional view of the law, would not be attended by evil consequences. The Singapore papers ascribed the catastrophe to there not having been a military guard on board the *General Wood*, and the Hongkong Government was saddled with the responsibility. But a Governor surely had no power to order troops on a duty which carried them beyond the limits of his own authority, and, besides, the passage of the convicts was contracted for, and the expense of putting up a prisoners' room, guard, etc., was defrayed by the owner of the ship. The usual way apparently was to pass a chain cable through the prison room to which the convicts were linked by the leg, and in the event of their proving refractory, the chain was bent to one of the anchors which could be let go on an emergency. A perusal of the narrative published in the Singapore papers led to the painful conclusion that due precautions had not been observed on board the *General Wood*, and that to this was to be ascribed her capture the day after she left Singapore. The prisoners' room was taken down to afford more stowage for sugar, the convicts were loosely secured, and badly guarded, and when they did get free, though only armed with billets of wood, there was no attempt to overpower them. To censure those who were beyond censure was an absurdity, but justice compelled one to say that, had the discipline been such as it ought to have been in a convict ship, the *General Wood* would never have been captured. The records of the time show that the insurances effected on the ship were not afterwards paid. The case was laid before counsel and an opinion given that the policy not having stated specifically that it included loss from mutiny of convicts, the assurers were not liable. The point, however, was to have been discussed in the Supreme Court at Bombay, in regard to which unfortunately nothing is to be traced in Hongkong.

No military guard on board the *General Wood*.

Due precautions not taken on board.

Insurance on the vessel disputed.

A free pardon was granted to Charles Thompson (con- three other constables at the Criminal Sessions held on the 15th April last of larceny in a vessel in port and on board of which he had been placed as a guard) on the 12th November.* No reason was assigned for the pardon granted to this particular man. On the same date, Patrick Collins, Patrick Doyle, and James Hamilton, privates in Her Majesty's 18th Royal Irish Regiment, convicted of robbery in February last and under sentence of imprisonment of one year, also received a free pardon.

European Constable Thompson pardoned.

Soldiers also pardoned.

# CHAPTER VIII.

## 1847-1848.

## SECTION I.

## 1847.

Suspension of Chief Justice Hulme. Unfounded charge of habitual drunkenness preferred against him by Governor Davis.—Trinidad Judicial Scandal.—Mr. Hulme a general favourite in Hongkong.—Reprehensible conduct of Governor Davis.—Degrading accusation against a Judge.—Comparison drawn between Lord Chief Justice Jefferies and Chief Justice Hulme.—Chief Justice Hulme had gained the respect and esteem of the community at large.—Charge originally preferred in a confidential despatch to Lord Palmerston.—Object of Governor Davis' private communication to Lord Palmerston.—Lord Palmerston regarded it as an official document and handed it to the Secretary of State for the Colonies.—Earl Grey demanded an investigation.—Governor Davis tries to withdraw from the accusation.—Character of a Judge could not be defamed with impunity.—Lord Grey requires Governor Davis to apologize or prove his charges.—Chief Justice Hulme cited to appear before the Executive Council.—Members of the Council.—The charges.—How the community received the charges.—The principal residents attend at the Council door to mark their respect for the Chief Justice.—Disgust at the conduct of Sir John Davis.—Chief Justice demanded a public inquiry which was refused him.—Members of the Council were all cited as witnesses for the prosecution.—Major-General D'Aguilar protested against the proceedings.—The sanctity of his hospitable board violated.—His private note to Governor Davis given in evidence.—Governor Davis asserts his reason for this course.—Underhand and groundless charges.—Character and position of the witnesses.—Nature of the evidence.—Major Caine's testimony.—The first charge negatived. Mr. Hulme afflicted with a varicose vein in the leg.—The second charge rebutted.—Major Caine's testimony again the exception.—The third charge set aside by a host of evidence.—Major Caine again the exception.—Contrary to expectation, the Chief Justice is suspended on the first charge, of being drunk on board H. M. S. *Agincourt* in November, 1845.—Belief not entertained that the Home Government will sustain the measure.—Sir John Davis as informer.—The affair a vile slander.—Government Notification of the suspension of the Chief Justice.—Residents leave their cards at the Chief Justice's house.—Chief Justice against suggestion of a public meeting.—Addresses of sympathy.—All complimentary.—*The Dublin University Magazine* on Chief Justice Hulme.—Chief Justice Hulme an acquisition in Hongkong.—His gift of law books to the Supreme Court Library.—His suspension a public calamity.—Sir John Davis' nominee to the acting Attorney-Generalship as Mr. Hulme's temporary successor.—The address of the community.—The reply.—The address of the Special Jury.—The reply.—The Attorneys of the Court accompany their address with a handsome gift.—The Chief Justice's reply to the address of the Attorneys of the Court.—The Principal Chinese Residents also show sympathy.—The reply of the Chief Justice to the Chinese.—English law.—Gratifying addresses.—Chief Justice's wife and family.—Motto on the gold snuff box.—General sympathy with the Chief Justice. A disgraceful affair.—Conduct of Governor Davis commented upon. Chief Justice Hulme a victim of persecution.—The Compton papers.—The recall of Governor Davis a probability.—Departure of Chief Justice Hulme.—The ovation given him by Europeans and natives.—The Chinese display flags and fire crackers.—A champagne tiffin on board.—The conduct of Governor Davis as viewed outside the Colony.—The Press of India.—The career of the Governor.—The Compton Case.—Governor Davis as the 'despicable' man.—Government Notification announcing appointment of Mr. C. M. Campbell as acting Chief Justice.—Universal sympathy with Chief Justice Hulme.—Mr. Hulme in private life.—Mr. Campbell had directed the prosecution against Mr. Hulme.—How Mr. Campbell conducted himself on the bench.—Mr. N. D'E. Parker, Crown Prosecutor.—Ordinance No. 6 of 1846.—Chief Justice Hulme only left the Colony one month after his suspension.—Probable reason.—The Establishment of the Supreme Court at the time of his suspension.—Rumoured resignation of Sir John Davis.—Mr. S. G. Bonham as his successor.—Press conclusions.—The case of Cairns *v.* Lieutenant

apology.—Governor Davis goes to Canton.—Major-General D'Aguilar acts.—December Criminal Sessions.—Major Caine and his compradore. Abandonment of case against Mr. Tarrant.—Mr. Parker's reasons.—Mr. Tarrant lays his case before Earl Grey.—Governor Davis' reasons for abandoning the charge.—Mr. Campbell. Alleged squeamishness.—Mr. Tarrant asked Chief Justice Hulme to intercede for him with Earl Grey.—Governor Davis returns from Canton.—He appoints his nephew, Mr. Mercer, a member of the Legislative Council in the place of Chief Justice Hulme.—Mr. Trotter, clerk to the Chief Justice, resigns.—Mr. Campbell recommends Mr. E. H. Pollard as successor.—Mr. D. R. Caldwell, Interpreter and Assistant Superintendent of Police.—Prosecution of Mr. Shortrede, Editor of the *China Mail* for contravening Ordinance No. 2 of 1844 two years previously—Press contravention.—Prosecution is withdrawn.—Information had been filed by Mr. Campbell who was to have tried the case.—Judicial affairs of 1847; resumé.—The Report of the Committee on our commercial relations with China.—The dual position of the Governor.—The evils of the *dirisium imperium*.—Ordinance No. 7 of 1846.

## SECTION II.

## 1848.

Disallowance of Ordinance No. 10 of 1845, Naturalization of Aliens.—And Ordinance No. 3 of 1847, Prevention of Piracy.—Approval of Order of Court relative to the execution of writs of capias.—Mr. Cay, Registrar, appointed Master in Equity.—Mr. Pollard, Keeper of Records and Muniments.—Mr. F. Smith, Surrogate of the Vice-Admiralty Court.—Mr. S. G. Bonham appointed Governor, *vice* Davis.—His previous career.—Sir John Davis' life in Hongkong after the Hulme episode.—Public opinion of Mr. Bonham.—Sitting of the Vice-Admiralty Court under Mr. Campbell.—The Chimmo Bay piracy.—Too Apo, the informer.—The Jury return a verdict of guilty on his evidence.—Governor Bonham afterwards pardoned the prisoners.—Major-General Staveley succeeds Major-General D'Aguilar.—He is gazetted Lieutenant-Governor of Hongkong.—Death of Mr. Goddard.—Execution of pirate convicts.—Piratical acts and the position of those who committed them.—Not the mere dregs of society.—Too Apo, the informer.—Major-General D'Aguilar appointed Colonel of the 58th Foot.—Departure of Major-General D'Aguilar.—A dinner in his honour.—Addresses.—His magnanimous conduct towards Chief Justice Hulme.—By this single act Major-General D'Aguilar's faults and eccentricities overlooked.—His career as Lieutenant-Governor of Hongkong reviewed.—Mr. Compton his fellow-passenger to England.—*The Dublin University Magazine*. Skit on Major-General D'Aguilar.—The 'Bamboo Act.' 'The Cackling Geese.'—Death of Major-General D'Aguilar.—Land.—Rules of Court regulating admission of Translators and Interpreters.—Supreme Court removed from Wellington Street to the present building in Queen's Road. The Irish celebrate St. Patrick's Day in the old Court House.



READING not infrequently of judicial misconduct in Colonial Courts of Justice; meeting often with bad temper, bad law and bad logic, and aware that the private lives of some of our Judges have not been quite in keeping with the purity of the ermine, the reader at times therefore is not surprised at coming across some startling news from some part of the Colonial world (as for instance the comparatively recent case known as the Trinidad Judicial scandal*) at which the mind revolts; but here, however, the people of Hongkong had yet to be pained and astonished at quite a different proceeding, initiated this time by the Governor of the Colony against the Chief Justice, Mr. Hulme. Of the latter gentleman, it was said he was zealous and intelligent to a degree, of a lively and social temperament, and of perfect uprightness and thorough independence. He appears to have been a general favourite in Hongkong, except of course at Government House, and his judicial decisions had given every satisfaction. There is something incongruous and repugnant in the very idea of a charge of habitual drunkenness

Suspension of Chief Justice Hulme.

Unfounded charge of habitual drunkenness preferred against him by Governor Davis.

Trinidad-Judicial Scandal.

Mr. Hulme a general favourite in Hongkong.

Reprehensible conduct

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of Governor Davis. Degrading accusation against a Judge.

being preferred against a Judge, and supposing even that Mr. Hulme had been guilty in respect of this degrading charge, which Sir John Davis had preferred against him, the course pursued by his accuser deserved the strongest reprehension at the hands of every honourable man. The accusation dragged the functionary who, above all others, is bound to maintain a rigid integrity and a scrupulous propriety of deportment, down to the level of the noisy brawler, who exposes his folly to the world and courts the disgrace he cannot avoid. It upsets all preconceived notions of the judicial character, and draws the mind insensibly back to the days of the infamous Jefferies, who was said to have drunk himself to death in the Tower, and of whom a contemporary historian affirmed that, even in his better days, "his friendship and conversation lay much amongst the good fellows and humorists, and his delights were accordingly drinking, laughing, singing, and all the extravagancies of the bottle." If such an accusation, therefore, be in its very nature odious, if it startles one when brought against a Judge of whose character nothing is known, how much more hateful and more astonishing must it prove when the party assailed is one whose reputation had hitherto been without spot or blemish, and who had so demeaned himself as to have gained the respect and esteem of the community at large. Such would seem to have been the case of Chief Justice Hulme. It is proper to state that the charge was first preferred in a private despatch written to Lord Palmerston, the Secretary of State for Foreign Affairs, by Sir John Davis, in his capacity of Her Majesty's Plenipotentiary and Superintendent of Trade, shortly after the decision in the Compton Case touched upon herein in November last.* This decision proved the reverse of palatable to Sir John Davis who had not been able to prevail upon the Chief Justice to sustain the illegal decision of the Consular Court after he had improperly written to him privately asking him to do so. The Chief Justice's adherence to the law of his country, in opposition to the wishes of Sir John Davis, gained him the enmity of that functionary, and the declaration of the legal advisers of Her Majesty's Government that the Judge could not have acted otherwise,† added oil to the flame that burned in His Excellency's breast.

Comparison drawn between Lord Chief Justice Jefferies and Chief Justice Hulme.

Chief Justice Hulme had gained the respect and esteem of the community at large.

Charge originally preferred in a confidential despatch to Lord Palmerston.

Object of Governor Davis' private communication to Lord Palmerston.

It occasionally happens that the biter gets bit, the fox falls into his own trap, and such was the case in this instance. Sir John Davis never expected that his private communication would go further, nor did he intend it to lead to an investiga-

* *Antè* Chap. IV.

tion ; his object was secretly to blast the character and ruin the prospects of his enemy. But the reputation of a Judge is not to be blasted by charges conveyed covertly to Her Majesty's Government, and Lord Palmerston, regarding the despatch as an official document, very properly handed it over to Earl Grey, the Secretary of State for the Colonies, who forthwith demanded an investigation. In reply to this, Sir John Davis reported that "since Mrs. Hulme had returned from England, the Chief Justice had improved, and that it would consequently be unnecessary to pursue the matter further." The character of a Judge, however, could not be defamed with impunity, and Lord Grey intimated to Sir John Davis that he must either apologize or prove his charges, and he chose the latter alternative.

Lord Palmerston regarded it as an official document and handed it to the Secretary of State for the Colonies.

Earl Grey demanded an investigation.

Governor Davis tries to withdraw from the accusation.

Character of a Judge could not be defamed with impunity.

Lord Grey requires Governor Davis to apologize or prove his charges.

Accordingly, on Monday, the 22nd November, 1847, it became generally known that Chief Justice Hulme had been cited to appear before the Executive Council, the members of which were Sir John Davis, Major-General D'Aguilar, Mr. A. R. Johnston (Secretary to the Governor as Plenipotentiary), and Major Caine, to answer to the following charges brought against him by Sir John Davis :—

Chief Justice Hulme cited to appear before the Executive Council.

Members of the Council.

The charges.

1st.—For having been intoxicated at a dinner party given by Rear-Admiral Sir Thomas Cochrane on board of H. M. S. *Agincourt* in the latter part of 1845.

2nd.—For having been intoxicated at the house of Major-General D'Aguilar in July, 1846.

3rd.—For being an habitual drunkard.

The announcement of these charges was received with incredulity ; even on Tuesday, the 23rd November, it was doubted that such infatuation as an attempt to prove them could exist, but erring humanity was not to end here, and the endeavour to blast the reputation of such a man as Chief Justice Hulme, in reference to whom such favourable comments have appeared herein regarding the past, was to be gone on with at all risk. A note in Mr. Hulme's handwriting, intimating to a neighbour that such was the fact and requesting Mr. Hulme to attend the Council and give evidence, left no doubt as to the course to be pursued. On Thursday, the 25th November, the first day the Council met, the principal residents, almost to a man, attended at the Council door to mark their respect for the Honourable the Chief Justice by uncovering as he entered to meet his accuser. For three days the Council was engaged examining witnesses. There are scarcely words in the language severe enough to express one's disgust, even at this distance of time, at the conduct of Sir John Davis in reference to his distinguished victim. On Thursday, before the proceedings commenced,

How the community received the charges.

The principal residents attend at the Council door to mark their respect for the Chief Justice.

Disgust at the conduct of Sir John Davis.

Chief Justice demanded a

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public inquiry which was refused him.

Members of the Council were all cited as witnesses for the prosecution.

Major-General D'Aguilar protested against the proceedings.

The sanctity of his hospitable board violated.

His private note to Governor Davis given in evidence.

Governor Davis asserts his reason for this course.

Underhand and groundless charges.

the Chief Justice demanded that the inquiry be a public one. This was denied him; an act of injustice as the members of the Council were all cited as witnesses for the prosecution, it being ruled that their evidence should be taken last, in order to fill any hiatus in the testimony that had preceded them. In Courts of Inquiry, it is not usual for the members to appear as witnesses, but, on this occasion, precedent, decency, and honour were set at defiance. The mind revolts at the idea of the sanctities of private life being invaded for the purpose of substantiating such accusations, and Major-General D'Aguilar, as a member of Council, protested against the proceedings *in toto*. He protested against the sanctity of his hospitable board being violated by an inquiry as to the conduct of his guests. He also protested against a private note to Sir John Davis, marked '*private and confidential*' being received in evidence, but the Honourable Baronet read it, coolly remarking at the same time that *his* letter to Lord Palmerston was also private. The one, however, was intended to ruin a man of high moral and intellectual character by underhand and groundless charges; the other, a confidential communication between two acquaintances inadmissible in evidence according to the code of honour which regulates society. General D'Aguilar showed at all events that his heart was in the right place, and not an Englishman in China (apart from a few officials) but admired his manly advocacy of the privileges of society so grossly violated.

Character and position of the witnesses.

The witnesses for the prosecution were nearly all naval and military officers; one officer of rank testified that he had met the Chief Justice at dinner parties eighteen times, and that he was always the first man to leave the table, "*the charges being perfectly groundless.*"

Nature of the evidence.

To prove the first count, that of having been intoxicated on board H. M. S. *Agincourt*, various witnesses were examined, but they proved a negative. The first declared that he had seen admirals, generals, and governors a great deal more excited. Others testified much the same, with the exception of Major Caine. That official declared that the Chief Justice was intoxicated on board the *Agincourt* and also at the General's party, but that he had not seen him under the influence of wine on other occasions. The first charge was negatived by Sir John Davis' own witnesses, and in a few words the facts were these. Mr. Hulme was at the time afflicted with a varicose vein in the leg.*

Major Caine's testimony.

The first charge negatived.

Mr. Hulme afflicted with

* That this was so and a complaint of long standing in the Chief Justice, the following extract from a letter, addressed by Mr. Hulme to his clerk Mr. Leggett, still on the records of the Court, and written as far back as the 7th December, 1844, clearly testifies:—

"Dr. Dill thinks I shall be able to come to Court on Monday, but that it will be necessary for me to keep my leg up on a couch. I shall therefore in all probability be

To enable him to appear in dress at the Admiral's party, the bandages were removed for the evening. Mr. Hulme, like many other good men, was of a gay and mirthful disposition, frank, gentlemanly, and social,—just the person, it was said, to be courted on such occasions. In the course of the evening his weak leg getting troublesome, and without recollecting that he was the guest of a creature of etiquette, he placed it on a couch or chair.

a varicose vein in the leg.

The second count, that of having been intoxicated at General D'Aguilar's table in July, 1846, was also rebutted. The guests, military and civilian, proved the charge to be false. Major Caine was again an exception, his evidence being in favour of the prosecution; but opposed to it, there were recorded the declarations of several military men who were present, and that of a civilian who left the house with the Judge and shook hands with him in the street.

The second charge rebutted. Major Caine's testimony again the exception.

The third count, that of being an habitual drunkard and the only one of grave importance, was set aside by a host of evidence including officers, naval and military; the heads of firms; the medical attendant of the accused; the lawyers practising before his Court; and a representative of the press who generally attended every Court to report. The evidence showed that on the Bench, the Chief Justice was remarkable for his composure of manner, for his patience in attending to the testimony of prevaricating Chinese witnesses, and for the impartiality of his legal decisions. All this certainly was incompatible with the shattered nerves of a drunkard. Those who had had the advantage of meeting him in society declared unhesitatingly that the charge was false. The number of witnesses was not short of thirty for and against the prosecution, though, with the exception of Major Caine, the testimony was favourable. The above is a condensed report of the proceedings before the Executive Council. Those who were acquainted with the whole facts treated the matter with derision, though it was rightly believed that, if he had the shadow of an excuse for doing it, Sir John Davis would suspend Mr. Hulme until the decision of Her Majesty's Government was known. In the face of the evidence, however, it was said, the Governor would scarcely dare commit such an outrage, though he had power to suspend any member of the Government, taking upon himself the responsibility which at times was rather a serious one.

The third charge set aside by a host of evidence.

Major Caine again the exception.

Contrary to expectation and in defiance of strong proof to the contrary, the Chief Justice was suspended from office on the first charge, that of having been intoxicated on board H.M.S. *Agincourt* in November, 1845, that is to say, exactly two

Contrary to expectation, the Chief Justice is suspended on

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years before the institution of the inquiry! No one for a moment entertained the belief that Her Majesty's Government would sustain this unjust measure. Although the inquiry had been conducted with closed doors, the evidence was known as much as if it had been open. People of all classes, naval, military, and civilian, bore testimony to the falsity of the allegations, but, as may be seen, it had been pre-arranged that the upright Judge was to be got rid of, for apart from being the judges, with the exception of Major-General D'Aguilar, all the members of the Council had either been informers in the matter or had been heard as witnesses. Sir John Davis as President occupied the respectable position of informer, and both Major Caine and Mr. Johnston had been heard as witnesses for the prosecution. Major-General D'Aguilar, with the true feelings of a soldier and a gentleman, denounced the whole affair as a vile slander, but these feelings unfortunately did not then predominate in the Executive Council of Hongkong. The inquiry, beginning on Tuesday forenoon, the 25th November, concluded late on Saturday, the 27th, and on Tuesday, the 30th November, appeared the Government Notification that the Chief Justice had been suspended;—very quick work it will be admitted, but suggestive of much. So soon as the result was known, the residents to a man left their cards at the Chief Justice's house. It was intended to hold a public meeting to determine upon the measures to be taken, expressive of the feelings of the community, but this was abandoned in compliance with the Chief Justice's wish, he being apprehensive that it might be construed into a hostile demonstration towards the Government. Addresses expressive of sympathy for his unmerited punishment, admiration for his high moral character, and entire confidence in his rectitude on the Bench were immediately got up and presented to Mr. Hulme from the following parties:—

**first charge, of being drunk on board H.M.S. *Agincourt* in November, 1845. Belief not entertained that the Home Government will sustain the measure. Sir John Davis as informer.**

**The affair a vile slander.**

**Government Notification of the suspension of the Chief Justice. Residents leave their cards at the Chief Justice's house. Chief Justice against suggestion of a public meeting. Addresses of sympathy.**

*First*—from the inhabitants of Hongkong, the address being dated the very day of the publication of the suspension of the Chief Justice from office.

*Second*—from the British Residents at Canton.

*Third*—from the members of the Special Jury.

*Fourth*—from the attorneys practising before the Supreme Court, the address being accompanied with a handsome gold snuff-box.

*Fifth*—from the principal Chinese residents of the Colony.

**All complimentary.**

These addresses were all in the highest degree complimentary; but after witnessing the Chief Justice's career upon the Bench for three years, there could be no doubt that he fully

insert here the following paragraph extracted from an article upon Hongkong and some of its officials which appeared in *The Dublin University Magazine* of July, 1847. The article fully shows what an acquisition the Colony had in the person of Chief Justice Hulme. The gift of his law books to the Supreme Court library, where they are to be found to this day in a perfect state of preservation and where they are yet of value, is alone an act of unselfishness and generosity,—having regard especially to the fact that in those days, the Court had yet acquired no library of its own,—never to be forgotten in connexion with his career in Hongkong. The following is the paragraph alluded to :—

*Magazine* on Chief Justice Hulme.

Chief Justice Hulme an acquisition in Hongkong.

His gift of law books to the Supreme Court Library.

* * * *

"CHIEF JUSTICE HULME."

"Some notice must be taken of the Court of Justice, in the construction of which many difficulties, all who know anything of the routine of business in legal offices are aware, must arise in a new colony. These difficulties have all been overcome by the exertions of the highest judicial officer in the service of the Crown. A most happy selection was made of a gentleman, and a lawyer of great ability, in the person of Mr. Hulme, to fill the office of first Chief Justice in the island. Nothing can exceed the masterly manner in which, unaided, he has prepared a body of general rules and orders for the regulation of the Supreme Court. The urbanity of his demeanour, the soundness of his judgment, and the impartiality of his conduct upon the bench, have secured for him, in a short time, the respect and esteem of all upright men. Nor are these legal attributes and attainments his only title to admiration. With a liberality the most unusual, the Chief Justice has placed a most valuable law library in the Court-House, for the use of practitioners and suitors."

His suspension, therefore, was rightly looked upon by the entire community—with the exception of a few who dreaded his impartial administration of justice—as a public calamity. And this was the more evident when it was seen later on how the business of the Supreme Court was conducted by the young person who was nominated acting Attorney-General by Sir John Davis during the absence on leave of Mr. Sterling, and whom he now appointed to act for Mr. Hulme after his suspension.

His suspension a public calamity.

Sir John Davis' nominee to the acting Attorney-Generalship as Mr. Hulme's temporary successor.

The following was the address presented by the community of Hongkong, which obtained one hundred and sixteen signatures :— *

Hongkong, 30th November, 1847.

Sir,

Impelled by a sense of duty, we the undersigned your countrymen and fellow-subjects in China, of various professions and pursuits, cannot refrain from expressing our feelings with regard to the extraordinary position in which we see you placed.

The address of the community.

* The same address was circulated at Canton, where it received one hundred and fourteen signatures.

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Our opinion of the charges brought against you is best shown is the esteem and regard, which your private character has won for you from a large circle of friends and acquaintances, and in the respect and confidence, which the able and punctual and faithful discharge of your public duties, have ever commanded for you from the entire community.

Whatever may be the final issue of these proceedings, be assured, Sir, that your administration of justice in the Supreme Court of Hongkong has earned for you the gratitude of your fellow-countrymen in China, and that you bear with you the respect and reverence due to an upright judge, performing the duties of his high office without fear or favour, faithfully executing justice and maintaining truth.

With the deepest sympathy and respect, allow us to subscribe ourselves, Sir, your most obedient and humble servants,

[Here followed the signatures.]

To The Honourable

JOHN WALTER HULME, Esq.,
*Chief Justice, Hongkong.*

The reply.

To this, the following answer was returned :—

Gentlemen,

I thank you for this expression of your sympathy and respect. I want words, not heart, adequately to convey to you my due appreciation of the kindly spirit, the noble, honourable, generous feeling, which has dictated the present address. However innocent a man may be, he can ill bear up under charges such as those which have been preferred against me, if he have not the sympathy and support of his fellow-men. It has been my good fortune to meet with the most universal kindness, in the trying position in which I have been placed. I am but too happy to be told that my private character has gained me the esteem and regard of my friends, and that my public character has won me the respect and confidence of the community. I trust I may never forfeit either of these valuable acquisitions.

Gentlemen, I will not detain you by taking a review of the proceedings instituted against me, indeed I am anxious to say as little as possible concerning the charges, which have been under investigation, until Her Majesty's pleasure as to the course pursued is known, but this much I feel myself at liberty to express, that not only have the charges not been proved but that they have been most positively disproved. That what I state to you is the fact will clearly appear when the evidence is made public, and I hope that not only the evidence may be published, but also the despatches relative to the charges, to which I have been subjected. It would be no difficult task to trace these charges to their true origin, but I forbear doing so for the reason I have already assigned. The matter is now in the hands of Her Majesty's Government, and it only remains for that Government to pronounce its opinion *upon the evidence*, as to the truth or falsehood of the charges.

Gentlemen, although I have suffered much from the independent discharge of my judicial duties, rest assured, that so long as I have the honour to hold Her Majesty's Commission no amount of suffering or misery shall ever induce me to depart from the course I have hitherto pursued—a course to which I am bound, as well by virtue of my oath, as by common honesty, and that I shall continue when restored to the office of Chief Justice, to base my judicial opinions upon the facts brought before the Court without fear or favour.

The address presented by the Members of the Special Jury was as follows :— Ch. VIII § I.

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The address of the Special Jury.

Victoria, Hongkong, 2nd December, 1847.

To the Honourable
JOHN WALTER HULME, Esq.,
*Chief Justice, etc., etc.,*
*Honghong.*

Sir,

We, the undersigned Members of the Special Jury of this Colony, have learnt with regret your suspension from office, and consequent retirement from amongst us.

As jurors, who have most of us served under your administration, from your first taking your seat on the Bench of the Supreme Court in China, till the present time, we beg, with every respect, to offer you the humble tribute of our praise for the upright and impartial manner in which you have conducted the duties of your high office; we thank you for the untiring patience with which you have investigated the various causes which have been brought before you for your decision; and we congratulate you on the more than common success (not a single appeal having been made against your decision) which has attended your administration of the law, during the entire period of your sojourn amongst us.

In taking leave of you, we may be allowed to indulge the hope that your absence will be brief, but should it be decided otherwise, we wish you a sincere farewell, and with the assurance of our warmest sympathies, we remain, Sir, your most obedient humble servants.

The reply of the Chief Justice was as follows :— The reply.

Gentlemen of the Special Jury,

I feel truly grateful for your kind address. Coming as it does from a class of gentlemen whose duties in the Supreme Court have afforded them such ample opportunities of judging of my conduct when on the Bench, it is rendered doubly valuable.

I am proud to think that the manner in which I have discharged my judicial duties has met your approbation, and I rejoice to know that the present mark of respect to my public character at once affords an answer to the charges which have been levelled against my private character.

Gentlemen, it is with the deepest regret I separate myself from you, but I trust the separation will be temporary only, and that I shall return to you amply repaid for the troubles I have undergone, and be allowed the opportunity of proving myself worthy of the respect and sympathy you have so kindly shown me.—Gentlemen, farewell.

The Attorneys of the Court, hearing that the Chief Justice had decided to proceed to England, waited till Christmas Day, when they presented their address to him, accompanied with a handsome gold snuff-box. The address expressed the enduring respect they entertained for him, and was as follows :— The Attorneys of the Court accompany their address with a handsome gift.

Victoria, Hongkong, 25th December, 1847.

To the Honourable
JOHN WALTER HULME,
*Chief Justice of the Supreme Court of Honghong.*

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sincerity trust will be but temporary, venture to express our esteem and admiration of your upright, able, and truly impartial discharge of the high trust reposed in you as Chief Justice of this Colony since the establishment of its Court of Judicature.

The manifold benefits conferred by you whilst on the Bench in the speedy and effective administration of Justice;—your unbiassed feeling, perfect equanimity, and great courtesy manifested towards suitors and their advocates, has at once endeared you to us, and has won for you the unqualified respect and affection of the community.

Great would be our desire had the limits of an address permitted fo dilate upon the unvarying kindness exhibited by you towards us, and still greater would be our desire to be allowed an opportunity of joining our fellow-colonists in giving public expression to the enduring respect entertained for you, but as this is not agreeable to your wishes, we beg to proffer you the accompanying token, to wish you all happiness during your sojourn at Home, and to indulge in the pleasing hope of seeing you again presiding over us as a judge, triumphant over the attacks of enmity, whether levelled at your professional fame, or at the purity of your private and moral character.

NORCOTT D'E. PARKER,
RICHARD COLEY,
WILLIAM GASKELL,
P. C. MCSWYNEY,
E. FARNCOMB,
} *Solicitors.*

The Chief Justice's reply to the address of the Attorneys of the Court.

The reply of the Chief Justice was as follows:—

Saturday, 25th December, 1847.

Gentlemen,

No words can sufficiently express my gratitude for your very handsome and flattering address—an address which I am perfectly satisfied would never have found its way up here, had there been the slightest foundation for the gross charges, which have been brought against me.

I have had the honour of presiding over Her Majesty's Supreme Court at Hongkong as Chief Justice for upwards of three years, and it affords me the highest gratification to find that my conduct has been such as to win your esteem and admiration. During this period you have at all times, whether in Court or at Chambers, shown me the utmost respect. Believe me, Gentlemen, this respect has been mutual, for depend upon it, to be respected, you must learn to respect others.

It also gives me the greatest pleasure to think that, as Judge, I have secured the respect and good wishes of the suitors and of the community at large.

I join most cordially in the wish, so kindly expressed, that I may soon return and again preside over the Supreme Court; but, be assured, Gentlemen, that whether I have the honour of holding Her Majesty's Commission in Hongkong or elsewhere, the remembrance of your address will never be obliterated.

You have not stopped here; I see before me the splendid token of your respect. Valuable as this token is intrinsically, it possesses a value far more than its intrinsic worth. It will be treasured by me as an heirloom and handed down to my children; and if, when my earthly career is terminated, any *kind friend* should cast the foul charges which have been preferred against me in their teeth, they can point to that token in refutation of the charges. But, much as I admire the token itself, the feeling which wrought

Gentlemen, whether our separation be long or short, I sincerely wish you all health, happiness, and prosperity, and beg you not to judge my feelings by the brevity of my address.

The principal Chinese residents also show sympathy.

The principal Chinese residents of the Colony were not to be outdone by their fellow-residents of other nationalities in showing sympathy with the Chief Justice. They also, on hearing of his treatment, spontaneously drew up and presented him with an address in Chinese, containing upwards of one hundred signatures. The translation of the address is not here reproduced in full, but in it appeared the following paragraph :—

"..... We always had good ideas of Judge Hulme since the opening of the Honourable Court until this day. So we ought to make a large and valuable present for His Honour on his return Home as a mark of our respect, for virtue has always a good reward. We know well, however, Your Honour will not accept it, so we can only send this valuable paper and its contents to Your Honour for your uprightness, cleverness, and pureness which will be established through all the world and go to the ear of everyone and also before your Queen in her palace, that she may know Your Honour's upright, clear, and pure heart....."

The reply of the Chief Justice to the Chinese.

English law.

The following was the Chief Justice's reply to the Chinese traders. It will be seen that the administration of *English Laws* is touched upon by Mr. Hulme, leaving therefore no doubt whatever as to the applicability of those laws in the Colony upon the promulgation of the Charter,—a subject animadverted upon before in the earlier portion of this work.* The Chief Justice said :—

"Chinese Inhabitants of Hongkong,

This mark of respect to my public character affords me peculiar gratification. As Judge of the Supreme Court of Hongkong, it has ever been my study to administer the laws of Hongkong fairly and impartially, totally regardless of the parties by whom redress from those laws may have been sought, whether Chinese or English. As inhabitants of a British Colony, one of the greatest privileges you enjoy is the right to a due and even-handed administration of the English laws, and I am satisfied that the more you become acquainted with these laws, the more you will learn to love and respect them. Be assured that no present you could have made me would have given me half the pleasure that your expression of gratitude and respect has afforded me. Farewell."

Gratifying addresses.

Chief Justice's wife and family.

Motto on the gold snuff box.

These addresses could not but have gratified the respected Judge himself; and to his wife and family they doubtless were doubly precious as denouncing and disproving a foul slander. The handsome gold snuff-box presented by the Attorneys of the Supreme Court bore the appropriate motto—"*Indignante invidia florebit justus*," and inside the lid, the words :—

"Presented by the Attorneys of the Supreme Court to the Honourable John Walter Hulme, Chief Justice of the island of Hongkong, as an humble tribute of their admiration of his unblemished iiitegrity and upright demeanour on the bench, and in testimony of their regard for his private and public character, which has gained him alike the confidence of the community, and the high esteem of the profession."

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General sympathy with the Chief Justice.

A disgraceful affair.

Conduct of Governor Davis commented upon.

Chief Justice Hulme a victim of persecution.

The Compton papers.

The recall of Governor Davis a probability.

Bitter, indeed, must have been the feelings of the honourable gentleman's slanderers when they perused the addresses. A very general sympathy towards the Chief Justice was excited by these painful proceedings. Altogether a more disgraceful affair than this had perhaps never occurred in modern times. Here was a Governor of a Colony taking a dislike to a Judge and privately slandering him; endeavouring to wriggle out of the difficulty when he found the secret calumny converted into open accusation; and finally trying the accused party by a tribunal of which he was himself President, and the members of which were permitted to give evidence against the functionary whose conduct was under inquiry. With what feelings of dismay the Chief Justice must have seen his accuser and the witnesses against him arrayed at once as Judges and Jurors, and how profound the admiration with which the European and native inhabitants of the Colony must have regarded such an exhibition of British justice! There was but one feeling on the occasion, which was that Chief Justice Hulme had been persecuted in a most disgraceful manner, and that he had passed most honourably through the fiery ordeal of an investigation into his private life. Malice and hatred had followed him to the table of his friends, but malignity itself had only charged him with being excited by wine *twice* in *two years*, and the charges had been refuted by many witnesses. The publication of the Compton papers must have satisfied the people that even on more delicate points, Sir John Davis was by no means scrupulous or governed by nice feelings of honour. On the other hand, however, it was considered that if the charges against the Chief Justice were upheld, the immediate removal of that official would of necessity follow. No Judge discovered to be an "habitual drunkard" could for a moment be permitted to retain his seat upon the bench, so also, should the accusation fall to the ground, there was nothing to prevent the recall of Sir John Davis. In whatever light it was viewed, and in whatever way it terminated, the accusation could not fail but to attach scandal to the Colony. A Governor capable of bringing a false charge of drunkenness against the highest judicial officer in the Colony, was obviously altogether unfitted for his post.

Departure of Chief Justice Hulme.

Before taking his departure from Hongkong "Chief Justice Hulme begged through the press publicly to express his grateful acknowledgments to those gentlemen who had so kindly left their cards at his residence after the investigation into the charges preferred against him," and on Thursday, the 30th December, he, with Mrs. Hulme, embarked for England in the P. & O. Co.'s Steamer *Pekin*. It will be recollected that he had arrived in the Colony on the 7th May, 1844, and that he had been

a fellow-passenger of Sir John Davis, the Governor. No further opinion of the oppression of which he had been made the victim, or of the high estimation he was held in by the community was now necessary. It was fervently hoped that at no distant period he would return to the Bench, the integrity and independence of which he had so nobly sustained, and for doing which he had now paid such a heavy penalty. The public had marked the conduct of his oppressors and had ceased to recognize them as gentlemen. At Pedder's Wharf His Honour was attended by the British community and the leading natives. The Chinese displayed flags and discharged a quantity of crackers. Altogether the departure of the Chief Justice was that of a triumphant rather than a suspended functionary. On board the *Pekin* many of his friends accompanied him, where a champagne tiffin was spread on the occasion.

The ovation given him by Europeans and natives. The Chinese display flags and fire crackers. A champagne tiffin on board.

The conduct of Sir John Davis towards Mr. Hulme had naturally attracted attention outside the Colony, and soon became a matter of notoriety in the British Colonies. The press of India notably, without exception, denounced him,—for the last but most prominent item of intelligence which had reached India about the state and progress of affairs in the Celestial Empire, had been the somewhat startling announcement that the Chief Justice of Hongkong had been tried and suspended for drunkenness! The career of the Governor had been closely watched in India whose commercial relations with this part of the world had now become so intimate, and the Compton Case and the opinion expressed by Sir John Davis as to the English in Canton was not unknown there, and the hope was now fervently expressed that this was the "last outrage of the despicable man" who, as Governor of the Colony, had for the last few years been hurrying on a promising Colony to ruin and exposing his country and countrymen to the contempt of the "haughty and cunning Chinese."

The conduct of Governor Davis as viewed outside the Colony. The Press of India. The career of the Governor. The Compton Case. Governor Davis as the 'despicable' man.

On the 30th November, appeared a Government Notification that "His Excellency the Governor had been pleased to appoint the Honourable Charles Molloy Campbell, Esquire, to officiate as Chief Justice of the Supreme Court in lieu of the Honourable John Walter Hulme, Esquire, who was suspended in accordance with instructions from the Right Honourable the Secretary of State for the Colonies, until," added the Notification, "the pleasure of Her Majesty be known." Rightly worded, as will be seen hereafter, was the concluding portion of this notification, for deep and universal had been the sympathy manifested towards the Chief Justice who had endeared himself to the community by his unflinching integrity on the Bench. In private life he had been esteemed and

Government Notification announcing appointment of Mr. C. M. Campbell as acting Chief Justice. Universal sympathy with Chief Justice Hulme. Mr. Hulme in private life.

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respected for those virtues which sweeten existence, and the very nature of his prosecution, not to say persecution, had only marked more prominently his good qualities as a Judge and as a member of society, and the one who had directed the prosecution, strange to say, upon which the Chief Justice had been suspended, now succeeded him upon the bench, and, taken in connexion with Mr. Campbell's "silent advice" as the result of the inquiry, no wonder he was now elevated to the bench in the place of Mr. Hulme.* That he did no credit either to the Bench or himself will hereafter be seen. On the elevation of Mr. Campbell to the Bench, Mr. N. D'E. Parker resumed his former position of Crown Prosecutor under Ordinance No. 6 of 1846, being gazetted on the same day as Mr. Campbell. With the exception of the Government having again no legal adviser, the Supreme Court was now practically fully constituted. An extraordinary fact in connexion with the changes noted above was, that Mr. Hulme did not leave the Colony till the 30th December, exactly one month from the time that he had been superseded by Mr. Campbell, but it may be that in those days direct communication was only monthly with the mother country, and that therefore Mr. Hulme had had no other opportunity of leaving the Colony. There is no ground upon which to form any other conclusion.

**Mr. Campbell had directed the prosecution against Mr. Hulme.**

**How Mr. Campbell conducted himself on the Bench. Mr. N. D'E. Parker, Crown Prosecutor. Ordinance No. 6 of 1846. Chief Justice Hulme only left the Colony one month after his suspension.**

**Probable reason.**

**The Establishment of the Supreme Court at the time of his suspension.**

At the time of the suspension of the Chief Justice, the establishment of the Supreme Court consisted of the following:—Mr. R. D. Cay, Registrar; F. Smith, Deputy Registrar; Lieutenant T. Wade, Chinese Interpreter; João de Jesus, Malay Interpreter; William Hastings Alexander, Clerk of Court; G. A. Trotter, Clerk to the Chief Justice, and John Brooksbank, Usher.

**Rumoured resignation of Sir John Davis.**

**Mr. S. G. Bonham as his successor.**

It had been understood for some time past that Sir John Davis had tendered his resignation, requesting that he might be relieved before the commencement of another hot season, and information now reached Hongkong that such was the case, though, of course, the outside public knew nothing positively upon the subject. But a reference to the different Commissions of his successor, Mr. Samuel George Bonham, shows that the news that had reached the Colony was not mere idle rumour, and that in reality Sir John Davis, at this moment at least, was no longer Her Majesty's Plenipotentiary and Chief Superintendent of Trade in China, for Mr. Bonham's Commission, as such, though not as Governor of Hongkong, was dated the 27th November,

1847. Assuming, said a local paper, the truth of Sir John Davis' resignation to be correct, "was it not reasonable to conclude that he was influenced in his desire to retire by the conviction that he had got himself into what the Americans call a 'fix,' and that it would be better to walk quietly down stairs than to make his exit under a certain rough species of compulsion?" Not a very flattering remark, it will be admitted, but suggestive of the feeling entertained for Sir John Davis in Hongkong.

Press conclusions.

The case of Cairns *v.* Sargent, which had afforded some talk for a time, came on for hearing on the 6th December. It was an action for damages for an assault and battery committed by the defendant, a lieutenant in the 95th Royal Irish Regiment, upon the plaintiff, the editor of a local paper, *The Hongkong Register*. On the morning of the 26th August, the defendant taking offence at a paragraph in the plaintiff's paper containing the report of a case in the Police Court in which, it was said, the defendant "an officer of the 95th had assumed the part of an informer by laying a complaint that a lamp hanging in front of a shop in Queen's Road was not burning"—a contravention, it may be noted, against a local enactment mentioned in this work under the date of January last,*—and that the Magistrate had dismissed the case, "but declared he believed the charge to be true and would do so until a witness was produced equally respectable as the informer,"—proceeded to plaintiff's residence and, after charging him with having called him (the defendant) an 'informer' twice, struck him several blows upon the head with his fist and umbrella.

The case of Cairns *v.* Lieutenant Sargent of the 95th Regiment. Action for damages for assault and battery. The cause.

The Jury awarded the plaintiff $1,000 damages. The plaintiff was represented as a very inoffensive man and one who, as an editor, seldom had come to extremes or suffered "gall to mingle with his ink," and it was difficult to perceive that Lieutenant Sargent should have considered himself so much aggrieved that the only remedy left him was the infliction of serious bodily injury under the circumstances. A superior officer had tendered an apology on the part of Mr. Sargent, which, however, Mr. Cairns had, after taking advice, refused to accept. On Wednesday, the 8th December, evidently after he had got rid of his Home despatches, including that concerning Chief Justice Hulme, Sir John Davis set sail for Canton in H.M.S. *Dædalus*, Captain McQuhæ, but, being becalmed, did not reach that place till Sunday, the 12th, when he on his arrival at once issued a circular through the Consul intimating to Her Majesty's subjects that he "would be happy to receive from them any communication they may have to make to him."

Verdict.

Plaintiff, editor of *Hongkong Register*, an inoffensive man.

Had refused apology.

Governor Davis goes to Canton.

During the Governor's absence, Major-General D'Aguilar as

Major-General

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usual assumed the administration of the Government. On the 15th December, Mr. Campbell presided over the Criminal Sessions of the Supreme Court. The calendar was a short one and none of the cases were of importance, but a noteworthy incident was the abandonment at this Sessions of the case against Mr. Tarrant charged with conspiring to injure the character of Major Caine mentioned in October last.* The Crown Prosecutor, Mr. Parker, stated that "there was no case against Mr. Tarrant," and he was discharged under proclamation. In consequence of this Mr. Tarrant now laid his case before Earl Grey, the Secretary of State.† It may be noted here that the Governor, Sir John Davis, gave, as his reason for abandoning the prosecution against Mr. Tarrant, that, as Mr. Campbell had advised the Government in the matter, he could not now sit upon the case! But this was, to say the least, an error. Mr. Campbell, it was said, had no such delicacy: at the very Sessions mentioned above, he had presided as Judge over more than one trial in which he had previously appeared as Attorney-General; at the Nisi Prius sittings held some time before, he gave judgment in two cases in which he had been retained for the defence shortly before going to trial! The abandonment of Mr. Tarrant's prosecution therefore was ascribed to other causes than squeamishness on the part of the acting Judge.

D'Aguilar acts.

December Criminal Sessions.

Major Caine and his compradore.

Abandonment of case against Mr. Tarrant.

Mr. Parker's reasons.

Mr. Tarrant lays his case before Earl Grey.

Governor Davis' reasons for abandoning the charge.

Mr. Campbell.

Alleged squeamishness.

Availing himself of the Chief Justice's departure for England, Mr. Tarrant, on the 20th December, addressed a long letter to Mr. Hulme, setting forth his treatment by the Government consequent upon the disclosures he had felt bound to make regarding Major Caine's compradore. Mr. Tarrant informed the Chief Justice that "in anticipation that the unpleasant business which called him to England would be speedily disposed of, emboldened him to solicit Mr. Hulme's valuable intercession and kind interest in his behalf with Lord Grey, in order to avert from him a portion of that injury which he had sustained through the performance of what he deemed 'an act of imperative duty.'" But the Chief Justice, quite apart from his own disgraceful treatment, was not likely, with his own affairs in hand, to have interested himself on Mr. Tarrant's behalf. Sir John Davis, having terminated his visit to Canton, returned hither on the 24th December, when he proceeded to fill up the other appointments which had become available consequent upon his suspension of the Chief Justice. On the 30th, the day Mr. Hulme left the Colony, he appointed Mr. Mercer, his nephew, who had come out with him as his Private Secretary and who had now become Colonial Treasurer, to be a member of the Legislative Council in the room of Mr. Hulme, Mr. Campbell for some

Mr. Tarrant asked Chief Justice Hulme to intercede for him with Earl Grey.

Governor Davis returns from Canton.

He appoints his nephew, Mr. Mercer, a member of the Legisla-

resigned his position of Clerk to the Chief Justice on the suspension of the latter,* the Governor on the 31st December, on the recommendation of the acting Chief Justice, Mr. Campbell, appointed Mr. Edward Hutchinson Pollard to succeed him, Mr. D. R. Caldwell, on the same date, being also gazetted as Interpreter and Assistant Superintendent of Police.

Executive Council in the place of Chief Justice Hulme.

Mr. Trotter, clerk to the Chief Justice, resigns.

Mr. Campbell recommends Mr. E. H. Pollard as successor.

Mr. D. R. Caldwell, Interpreter and Assistant Superintendent of Police.

At the December Criminal Sessions another important prosecution was abandoned. It was that against Mr. Shortrede, the editor of *The China Mail*, for not conforming with the provisions of Ordinance No. 2 of 1844, by having removed his printing establishment *two years before* from one place to another without communicating the fact to the authorities. It was understood that something lay at the bottom of this prosecution, as Mr. Shortrede had made himself rather conspicuous some time before in the matter of some revelations concerning the Police. Mr. Parker, the Crown Prosecutor, refusing to lend himself to such vexatious proceedings, decided to withdraw the prosecution, although the defence regretted "that the prosecution had not been suffered to take its course so as to have had an opportunity of exposing its whole history." The information had been filed by Mr. Campbell as acting Attorney-General, and was to have been tried before him as acting Chief Justice, the latter, it was said, "like a second Bottom, having undertaken the parts of both Pyramus and Thisbe."

Prosecution of Mr. Shortrede, Editor of the *China Mail*, for contravening Ordinance No. 2 of 1844 two years previously.

Press contravention.

Prosecution is withdrawn.

Information had been filed by Mr. Campbell who was to have tried the case.

The judicial affairs of 1847, as may be gathered from the foregoing, were not without considerable interest to the Colony or causing occasional sensational alarm or feeling of distrust in those placed in authority. The appointment early in the year of a Select Committee of the House of Commons to inquire into the condition of our commercial relations with China, the expedition to Canton, the condition of the European Police, the appointments of Major Caine as Colonial Secretary, and of Mr. Hillier as Chief Magistrate in opposition to the wishes and greatly to the astonishment of those residents who apparently had the best interests of the Colony at heart, and last, though not least, the disgraceful and most humiliating suspension from duty of Chief Justice Hulme by the Governor through petty spite and after having used every means in his power to lower and degrade him in the eyes of the public however unsuccessfully, and only to be shortly afterwards reinstated into office again by the Home authorities, as will be seen hereafter,† are all important eras in the judicial annals of the Colony never to be obliterated. Irrespective of this, several other causes had combined to depress the condition of affairs in the Colony.

Judicial affairs of 1847; resumé.

* The records show Mr. Trotter as a clerk in the Colonial Secretary's Office in 1844,

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1847.

The Report of the Committee on our commercial relations with China.

The Chinese Committee during the year carefully investigated some of them. From the report upon which they agreed after a long and patient examination of the most competent witnesses upon the subject, it resulted that the causes of disappointment had been threefold,—first, they enumerated certain considerations drawn from the geographical situation of the island, and the method in which the development of its resources had been shackled by the stipulations of treaties previous to its occupation; secondly, and in addition to these inevitable or natural disadvantages, there had been causes arising from internal administration or mal-administration rather of the affairs of the Colony; and, lastly, there were others consequent upon the dependence of the Governor on two departments of administration at Home. As Governor of a Colony he was, of course, immediately dependent upon the Colonial Office. As representative, in a manner, of Great Britain at a foreign Court, and Superintendent of Trade, he was amenable to the authority of the Secretary of State for Foreign Affairs. The evils of this *divisum imperium*, seen so vividly to his own astonishment by Sir John Davis in his treatment of Mr. Hulme, had been aggravated by this additional circumstance, that these two departments of State, although pulling in different directions, in other respects had combined in their efforts to enforce upon the Governor a line of policy which, so at all events it was alleged, had been disagreeable to the inclinations and hurtful to the interests of the Colonists. Under such circumstances, then, the task of Sir John Davis may not have been an easy one, and, if he had failed to reconcile so many incompatibilities, it may probably have been more the fault of circumstances than of the man. The registration system by which every Chinaman, twenty-four hours after he had landed in the island, was compelled to furnish himself with a registration ticket, stating his age, name, family, height, former residence, and occupation, had turned out extremely offensive to the Chinese. The effect of it had been to keep away respectable Chinese from the Colony, and invite only men of bad character, though it was hoped that Ordinance No. 7 of 1846, promulgated early in the year, would work an improvement over previous similar measures. Nor were the Police punishments less offensive to the prejudices of the Chinese. The point may have appeared ludicrous, but from an answer to Dr. Bowring's question, as may have been seen, in addition to blows with a rattan the Police were in the habit of cutting off the tails of the Chinese. When they found they could splice on a tail, the Police ended by shaving off entirely the original appendage. All this may have seemed extremely ridiculous at first sight, but when it was considered that the effect of the punishment was to drive the man on whom it was inflicted to desperation and to expel him from

The dual position of the Governor.

The evils of the *divisum imperium*.

Ordinance No. 7 of 1846.

the society of respectable Chinese, it might perhaps have been condemned for wantonness and impolicy. Undoubtedly no respectable Chinaman would enter a Colony and submit himself to the laws of a people of which he understood nothing, when the consequence of their infraction was a punishment that degraded him in his own eyes as well as those of his fellow-countrymen. During the year, Sir John Davis had several times absented himself from the Colony in connexion with various missions, accounting, no doubt, for the few legislative measures enacted during the year. Only six Ordinances were passed during the year.



Disallowance of Ordinance No. 10 of 1845. Naturalization of Aliens. And Ordinance No. 3 of 1847. Prevention of Piracy.

The year 1848 opened with a proclamation announcing that Ordinances No. 10 of 1845, relating to the Naturalization of Aliens within the Colony, and No. 3 of 1847, for the Prevention of Piracy, had been disallowed by the Home Government. On the other hand, the Rule of Court of Hilary Term dated the 1st January of this year, which passed the Legislative Council on the 20th of the month, relative to the execution of writs of capias on persons out of the Colony but within the jurisdiction of the Supreme Court, was approved of and confirmed by the Secretary of State for the Colonies and duly notified on the 15th July. On the recommendation of the acting Chief Justice, on the 5th January, the Governor appointed Mr. Cay, the Registrar, to be Master in Equity, and Mr. Pollard, the acting Chief Justice's Clerk, who had succeeded Mr. Trotter, to be Keeper of Records and Muniments, and on the 11th, Mr. F. Smith, the Deputy Registrar, was appointed a Surrogate of the Vice-Admiralty Court for the purpose of taking affidavits.

Approval of Order of Court relative to the execution of writs of capias.

Mr. Cay, Registrar, appointed Master in Equity.

Mr. Pollard, Keeper of Records and Muniments.

Mr. F. Smith, Surrogate of the Vice-Admiralty Court.

The rumour mentioned at the latter end of last year that Sir John Davis had resigned proved to be correct, and official intimation was now received that Mr. Samuel George Bonham, whom rumour had pointed out as the Governor's successor, was really the nominee. He had previously been Governor of the Settlements of Singapore, Penang, and Malacca; and it was announced that he was leaving England on the 20th January, and would arrive in the Colony by the end of March.

Mr. S. G. Bonham appointed Governor, *vice* Davis. His previous career.

Sir John Davis had in the meantime taken his passage homewards for about the same time. His life at this time must have been anything but happy. Since his return from Canton on the 24th December last, and indeed ever since the Hulme episode, he was said to have led a retired life. He is reported to have been *cut* by every one of any standing in the island. He had not made his appearance in public from the time he returned from Canton, probably not liking to pass without the

Sir John Davis' life in Hongkong after the

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at the ensuing races, but no horses entered for the prize, and so many demonstrations of his unpopularity must have annoyed him considerably. But the appointment of Mr. Bonham, who was known to several of the residents, gave satisfaction, as they were unqualified in expressing admiration of his character. When Governor of Singapore he was universally esteemed; his affability had gained him the good-will of those who did not regard politics, while his liberal sentiments and close application to business were appreciated by others. He had had much experience in legislating for a commercial settlement, and it was therefore hoped that his career would not detract from his well-earned reputation.

Public opinion of Mr. Bonham.

Sitting of the Vice-Admiralty Court under Mr. Campbell.

A Sessions of the Vice-Admiralty Court was held on the 24th January under the acting Chief Justice, Mr. Campbell, the senior naval officer in command, and Mr. Hillier, the Chief Magistrate. There were several cases of piracy, in one of which thirteen men were arraigned on a charge of piracy on the 18th December last. In this case one of the men turned Queen's evidence. The Jury found the twelve others guilty and they were sentenced to death. Three of the other cases were of individuals charged with being engaged in the noted piracy on the *Caroline* and *Omega* in Chimmo Bay, reported in April last.* The evidence in all these cases was not only the same in substance, but obtained in the same way, from an accessory now an informer, so that the only evidence was that of the infamous Too Apo, a miscreant who, having confessed his participation in this very crime, had been allowed at the first trial in connexion with these cases to turn Queen's evidence, pardoned, and then taken into the service of the Police as an informer! † His testimony as to the guilt of the prisoners, tainted in its very source and totally unsupported by other proof, as moreover was pointed out by the presiding Judge, was yet considered sufficient by the Jury who returned a verdict of guilty in each case. Strong comments were naturally passed in consequence, and the hope was expressed that the Governor would not sanction the continuance of a system which probably was made use of for the purpose of extorting blood money. As will be seen hereafter, three of the prisoners convicted at this Sessions and sentenced to transportation, two for life and one for three years with hard labour, received a free pardon from Governor Bonham in July of this year.

The Chimmo Bay piracy.

Too Apo, the informer.

The Jury return a verdict of guilty on his evidence. Governor Bonham afterwards pardoned the prisoners.

Major-General Staveley succeeds Major-General D'Aguilar.

Major-General William Staveley, C.B., who had previously served in Mauritius, in a similar capacity, and whose expected arrival had been spoken of in succession to Major-General D'Aguilar as Commander of the land forces in China,

arrived by the P. and O. Co.'s Steamer *Braganza* in the morning of the 26th January with his family. He landed at about half past ten o'clock at Pedder's Wharf, where he was received by Major-General D'Aguilar and staff, with the military honours due to his rank. On the 27th he was gazetted as Lieutenant-Governor of Hongkong, and took the oaths and his seat as a member of the Executive Council on the same day.

He is gazetted Lieutenant-Governor of Hongkong.

It was now announced that Mr. W. H. Goddard, the solicitor, had died in Singapore on the 27th January.

Death of Mr. Goddard.

On Friday morning, the 4th February, four of the twelve pirates condemned to death at the recent Vice-Admiralty Sessions were hanged at the usual place in the presence of a large number of Chinese, the others having had their sentences commuted to transportation for life. Mercy is commendable, but in the present instance it was said not to be very politic. Piracy would never be put down until some fearful examples were made, and the lower bazaar *clique* completely broken up. Of the four men hanged, one had been a compradore in Canton for three years, and since then had kept a shop in the lower bazaar in Hongkong; another had for years been a a licensed pilot in the Colony. It was not therefore the mere dregs of society who committed these atrocities, but men who lived in Hongkong and kept up an appearance of respectability. It was a matter for regret, however, that in this case the conviction had been obtained on the unsupported testimony of the approver Too Apo, of whom more anon.

Execution of pirate convicts.

Piratical acts and the position of those who committed them.

Not the mere dregs of society.

Too Apo, the informer.

*The London Gazette* of the 11th February announced the appointment of Major-General George Charles D'Aguilar, C.B., as Colonel of the 58th Foot, *vice* General Maitland, deceased. Major-General Staveley assumed command of the troops in succession to Major-General D'Aguilar on the 16th, drawing his allowances, however, from the 26th January, the date of his arrival in the Colony. General D'Aguilar returned to England by the P. & O. Co.'s Steamer *Lady M. Wood* on the 28th February. He had been upwards of four years in China, having arrived in the Colony on the 27th December, 1843. A party of his friends testified their respect by giving him a dinner at the Club on Thursday, the 24th, the heads of all the branches of the naval and military services being invited, but invitations were not extended to any of the civil establishment. Several addresses were also presented to him before his departure, and although he had sanctioned some of Sir John Davis' worst acts, and to some extent had endorsed the misrepresentations of the latter made to the Home Government regarding his countrymen in Canton, the people of the place were inclined to forget all his faults on

Major-General D'Aguilar appointed Colonel of the 58th Foot.

Departure of Major-General D'Aguilar.

A dinner in his honour.

Addresses.

His magna-

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towards Chief Justice Hulme.

Chief Justice, on the occasion of the persecution of the latter by Sir John Davis, who contrived to bring amongst his charges of inebriety, one of Mr. Hulme having been drunk at the General's house at a dinner party given by him. Notwithstanding his strenuous protests against this charge being gone into, and above all that a letter which he had written to the Governor upon the subject, marked 'private and confidential,' and which the latter had kept, being made use of, the matter was gone into. It was no wonder that the General was indignant under the circumstances,

By this single act Major-General D'Aguilar's faults and eccentricities overlooked.

and that by this single act of his he should have gained in the estimation of the public to the extent of his faults and eccentricities being almost forgotten at his hour of departure from the island. In his capacity of Lieutenant-Governor, General D'Aguilar had had few opportunities of action, but during the occasional absence of the Governor he had manifested the same solicitude for the interests of the community, not forgetting the military aid he afforded the Police when most wanted, in putting down robberies, as in promoting the welfare, comfort, and efficiency of the troops. Of this he left behind him lasting proofs by the new military barracks and hospitals which he caused to be built, thus redeeming Hongkong from a reputation for mortality which had become proverbial. Curiously enough, amongst his fellow-passengers Home, was Mr. Compton, the gentleman from Canton who had given so much trouble all round, and whose case has been already so often referred to. If they ever spoke on board, Mr. Compton must have often alluded to poor Chief Justice Hulme and to the trouble *he* had brought upon him.

His career as Lieutenant-Governor of Hongkong reviewed.

Mr. Compton his fellow-passenger to England.

*The Dublin University Magazine.* Skit on Major-General D'Aguilar.

Before concluding with Major-General D'Aguilar, it may not be inappropriate to reproduce here the following amusing skit in reference to him, and which so fully shows up the General in some of those eccentricities for which he had acquired so much notoriety here. It is also taken from *The Dublin University Magazine* of July, 1847, before referred to. The reference to the "Bamboo Act," alluded to herein in August, 1844, and the "Cackling Geese," now a new subject, will afford some merriment :—

The 'Bamboo Act.' 'The Cackling Geese.'

* * * *

"THE BAMBOO ACT."

"An Ordinance of the same year formed the subject of much bitter feeling, and no small amusement to many, for a long period. Robberies and housebreaking being of frequent occurrence, it became necessary for merchants and private individuals to employ watchmen, who, according to custom, struck together two hollow pieces of bamboo, to show they were on the alert, as they walked round the premises. During the temporary absence of the Governor, who went to visit the ports, the Major-General assumed the reins of Government as Lieutenant-Governor, and caused an Ordinance to be passed and promulgated, prohibiting, under certain pains and penalties the

in the evening and five o'clock in the morning.* This gallant officer was the only person who complained of this usage; he alone declared that his health was sacrificed—his slumbers disturbed—and he alone had no occasion for a watchman, having a military guard. His edict was universally complained of, as those who employed watchmen had a right to require an audible proof of their vigilance. It was considered too good a joke, that because an old soldier who ought to have been accustomed to war's alarms could not sleep, merchants and private individuals were to be suddenly deprived of the protection for which they paid, without the substitution of a better. In spite of much squabbling, the grumbling of the Major-General, and his personal visits, attended by the Police, the watchmen of the merchants continued to beat the bamboo; and many a laugh was raised by this '*bamboo question*' during the progress of the strife. The slumbers of the Major-General, it must be owned, were very easily disturbed. He could not sleep if a goose cackled; an American trader who lived opposite to him was therefore requested to kill or remove all his geese, as their cackling caused the Major-General to awake at too early an hour in the morning!!!"*

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Major-General D'Aguilar died in London, on the 21st May, 1855. At the time of his death he was a Knight Commander of the Bath, and had reached the rank of Lieutenant-General.

Death of Major-General D'Aguilar.

From the Report of the Select Committee of the House of Commons before noticed, it appeared that, after a most minute inquiry into all the circumstances of the land sales in Hongkong, the Committee did not recommend any reduction in the rates at which land was purchased. The principal evidence as regards land sales and land tenure was given to the Committee by Colonel Malcolm, who was a member of the local Committee appointed by Governor Sir Henry Pottinger on the 29th March, 1842, and by Mr. Scott. In his evidence before the Committee of the House of Commons, Colonel Malcolm stated that he conceived that, for the price which was paid, the land ought to be held for 999 years or in fee-simple; that such an arrangement would be most decidedly advantageous to the Government, and that the circumstance of the leases having been confined to short terms had been disadvantageous to the interests of the Colony. Colonel Malcolm, further, in his evidence, denied that Sir Henry Pottinger had done all in his power to force the merchants to settle at Hongkong, and stated that the moment it was announced that the island was to be retained as a British Colony, the merchants flocked over from Macao, and did everything in their power to induce Sir Henry to give them land, which he refused to do until he had received further instructions from England; that those who had been fortunate enough to secure land when Captain Elliot was Plenipotentiary, instantly commenced building on a large scale, for, being under the impression it was to be a free port, they predicted it would be the depôt from which the five ports of China would be supplied; that

Land.

* It may here be noted that the above and other articles in *The Dublin University*

Ch. VIII § II. 1848. large sums had been offered for the sites which had been allotted by Captain Elliot and when Sir Henry put the land up to auction, the prices it brought were strong evidence of the opinion the merchants had of the value of the place; that in a few months an extended trade sprung up, and immense quantities of piece goods were sold on the island, which were transported to the mainland in native boats; that small vessels were passing hourly between Canton and Hongkong, carrying the goods which were sold by sample at the former place, and, daily, vessels were coming from the north to obtain supplies for the other ports; and that no complaint was then heard of the want of accommodation at Canton, for little was required, the principal merchants merely thinking it right to have a house for a junior partner to transact business at, keeping their warehouses, etc., at our own settlement, as they preferred having their property under the protection of the British flag. Such Colonel Malcolm stated, was the state of the Colony when he left it in the year 1843.

Mr. Scott, in his evidence before the Committee (as referred to in *The Times* newspaper of the 15th January, 1847), stated that the grievance of which the Chinese complained, and which had rendered them unwilling to lay out any money in the island, was that they thought themselves liable to be dispossessed at any time of any land they might purchase; and, as an example of the dealings of the Government with the Chinese, Mr. Scott stated that lands were given to them in 1841-2 by the proper Land Officer, with certificates of ownership, and, under the authority of the local Government, they were subsequently dispossessed by orders sent out from Home, the lots having been sold over their heads. The comment of *The Times* newspaper upon this is, that this is the old Colonial grievance. If an Englishman's house, in his own country, is his castle, his house in a colony is that particular spot of earth from which he is most certain to be ejected; that it might naturally have been supposed that in an island so small as Hongkong some continuous line of policy might have been followed from the beginning.

As a result of the negative nature of the report of the House of Commons upon the land tenure and Crown rents levied upon the lands of the Colony, the landowners, on the 19th February, forwarded a petition to Earl Grey, the Secretary of State for the Colonies, praying for the abolition of the land rents.

at this time appeared in *The Friend of China* newspaper, for 1848, (p. 64), as follows :— Ch. VIII § II. 1848.

"A most unfortunate time has been chosen for the memorial to Lord Grey praying for an abolition of the land rents, and we fear that this document will tend to confirm the impression which prevails at the Colonial Office, that we are unreasonable in our demands. The report of the Select Committee lately engaged in investigating our commercial relations with China and the state of Hongkong has not yet been discussed in the House of Commons ; but with that report before us, and the mass of evidence which accompanies it, we confess, we do not see the slightest hope of any important reduction in the land rates—or indeed any reduction at all. After a most minute inquiry into all the circumstances of the land sales, the Committee have not recommended a reduction in the rates at which the land was purchased ; but it has done that which is of far greater consequence : it has recommended the entire removal of all restrictions upon trade. From the cession of the island until now, Her Majesty's Government have looked upon the public lands as almost the sole source of revenue, and it is not to be supposed that after the best portions of these lands have been secured by individuals, Government will remit the rent for which the leases were actually purchased, and raise an equal amount of revenue by resorting to taxation. Neither can it be credited that these rents will be abandoned, and Government assume the whole expense of the civil establishment. In no civilized country do people live free of taxes of some kind or another, and apart from the obnoxious excise imposts, we have but one tax in Hongkong,—that for Police. The land rent is not a tax ; the lands are sold and the purchasers believe they have got an equivalent for their money,—if they are mistaken afterwards, they may be said to have made a bad bargain, a matter of frequent occurrence in life. But remit these rents, and raise the same amount from taxation, and the Colony will be borne down, to relieve, or possibly enrich the landholders. It would be unjust to all who do not own land, to allow those who have purchased the finest sites to sit rent free ; and so far from furthering the prosperity of the Colony, it would wither it up for ever. No, remove every fiscal restriction upon commerce, and give an intrinsic value to property which it does not now possess, and there will be few complaints of heavy ground rents ; but cancel the obligations for rent, and we will be saddled with taxes, port dues, etc., and every article of consumption will bear a fiscal charge. We would remind our readers of Lord Aberdeen's sentiments upon this head, and if His Lordship's liberal commercial policy has not been carried out, the blame lies at the door of an illiberal local Government. Addressing Sir Henry Pottinger, under date of 4th January, 1843, His Lordship says,—

"The intention of Her Majesty's Government being that Hongkong should be a free port, and that the harbour dues should therefore be as light as possible, so as to give every encouragement to the commerce of all nations, it is clear that no revenue can be looked for from import or export duties to cover the expenses attendant upon the occupation of the island. The principal source from which revenue is to be looked for is the land ; and if by the liberality of the commercial regulations enforced in the island, foreigners, as well as British subjects, are tempted to establish themselves on it and thus to make a great mercantile entrepôt, with very limited dimensions, Her Majesty's Government conceive that they would be fully justified in securing to the Crown all the benefits to be expected from the increased value which such a state of things would confer upon the land."

The views of Her Majesty's Government as laid down in the above extract appear liberal and just. The colonists, however, have good ground of complaint in so far, that while high rents are secured to the Crown, the restrictive

Ch. VIII § II. 1848. reasonable expectations of this being a great commercial entrepôt, and many have been induced to invest large sums in unprofitable property, and this is the principal grievance which requires to be redressed. Sir John Davis and his friends will, no doubt, encourage the belief that the high ground rents have been the drag upon our advancement, which is a fallacy. Two or three hundred dollars of rent less or more will not keep merchants from settling in the Colony. It was the utter prostration of trade resulting from monopolies of the chief articles of traffic, and other wretched acts of legislation, which drove away the little commerce we had when the present Governor entered upon office; but we fear that this memorial will be twisted into an admission on the part of the inhabitants that such is not the truth.

The privilege of memorializing the Government is one of high value, but before making use of that privilege, it is prudent to consider whether there are good grounds to believe that the prayer of the memorial will be granted. In the present instance an abolition of the ground rents, or the reduction to a nominal rent, appears hopeless. In support of an opinion (which, by the way, we have substantial reasons for wishing to be erroneous) we refer to the documentary and other evidence published in the report of the Select Committee; a brief review of which, as far as regards land rents, will enable others to judge of the probable success of the memorial, as by this report its fate will be settled.

On the 7th June, 1841, Captain Elliot gave notice that on the 12th "a sale of the annual rate of quit-rent of 100 lots of land having water frontage, will take place at Hongkong." This sale was postponed to the 14th from the difficulty in surveying the ground. A Notification states that only 50 lots had been put up, but in point of fact there were only 35, 11 having been reserved, and 4 not marked out at all. Of the 35, 34 were sold; the dimensions of one are not given, but 33 averaged £69 per 10,000 square feet, the aggregate amount of sale being £3,067 for 445,965 square feet. The lots were put up at £10 each without reference to size, the purchasers being required within six months to erect a building of the value at $1,000. At the upset price the rental upon the 34 lots actually sold would have been £340; but from competition it was run up to £3,272.10*s*. Captain Elliot appears to have been surprised at the result, as on the 17th June, three days after the sale, he addressed the purchasers to the effect that he would "move Her Majesty's Government either to pass the lands in fee simple for one or two years purchase at the late rates, or to charge in future no more than a nominal quit-rent, if that tenure continues to obtain."* On the faith of this promise, more money was laid out in improvements than otherwise would have been done; but as has already been shown from Lord Aberdeen's despatch to Sir Henry Pottinger, the British Government determined when the island was ceded, to look to the land rents for a revenue, leaving the Colony free of import or export duties.

These sales, it may be remarked, were confirmed after the island was ceded, rent being paid from that date at the rate of sale in June, 1841; the title granted was a lease for 75 years. When the lots were first sold it was uncertain where the town would fix itself, and the rates varied extremely,—thus lot No. 15 containing 15,900 square feet was purchased for £20 per annum (the average of sale would give about £105); lot 24 of nearly a similar size was knocked down for £160, and other lots, sold at large prices, have from their locality proved nearly valueless. The cheap lot mentioned (15) is one of the best on the island being near the centre of the town; but this is as much the result of chance as of judgment—had the town been taken either east or west, it would have been unproductive property.

Subsequent to this sale, grants of land were made by Mr. A. R. Johnston,

at the average of the June sales; the town lots at the rate of £20 an acre, and suburban lots at £2 an acre. The title of the marine and town lots was to be in perpetuity; the suburban lots, grants for 100 years. It was on the faith of this arrangement, that a large portion of the town was built; and the complaints of those who had afterwards to pay the average of the sales of January, 1844, appear more reasonable than those from holders of marine lots for which they have not been called upon to pay more than they bargained for. The whole of these grants were repudiated by Sir Henry Pottinger in compliance with instructions from Lord Stanley. A Committee was then appointed to inquire into the nature of the claims to the various grants, and where improvements had been made, leases were given for 75 years. Individually, there were many cases of hardship in this settlement, but it does not appear that the Committee acted unfairly.* Ch. VIII § II — 1848.

On the 12th December, 1843, a sale of the leases of public lands was advertized to be held on the 22nd January, 1844. The lots to be sold were all town lots extending from the Harbour Master's hill to the central police station, comprising what is now the centre of the town. On the day of sale, there was a large attendance, and the form of a 75 years' lease was read, but the terms of sale were unknown, or only known to a few, in consequence of this (there being no forfeiture should the leases not be taken up), there was an animated competition, and the inland lots were run up in some instances to prices higher than marine lots sold for in 1841. Making every allowance, however, for a forced competition—such for instance in people purchasing lots adjoining those upon which they had built, and others purchasing lots upon which they had already built without having a title to the land—it was still evident that much confidence was felt in the value of the land, indeed, subsequent to the sale several of the lots changed hands at a considerable premium.

The next land sale was held on the 12th July, 1844, three years after Elliot's sale. Twenty-four lots were offered and sold, 12 being marine and 12 inland; but it is to the marine lots we particularly refer, as showing that after the tenure was known, that description of property was still in favour. The twelve lots measured 199,719 square feet, the aggregate amount of the annual rent being £1,815, or £90 for 10,000 feet. This was a large advance upon Elliot's sale, and is a fatal answer to the argument that that sale should be set aside on the grounds that the competition was "unnatural." It is worthy of notice that at the sale of June, 1841, lot 15, measuring 15,900 feet sold for £20; at that of July, 1844, the adjoining lot (14) measuring 13,512 feet brought £204, and after the sale was disposed of for a premium of $2,000.

In the face of this documentary evidence it is vain to expect any material reduction in the land rent; but were the prayer of the memorialists granted, and a pro rata deduction made, it would not in any degree equalize the rents; No. 14 would still pay ten times the rent of No. 15, though this property is not more valuable. Both lots were purchased at open auction, and, however heavy the rent may fall upon No. 14, he has no just cause of complaint; were the British Government to take 25 per cent. from the rent roll he would pay £153, while his neighbour only paid £15. No. 14 and those in a similar position can only be materially benefited by the entire abolition of the land rents, and the wildest dreamer cannot expect this; neither is it desirable that this should be done, as land is the legitimate source of revenue.

From the documentary, we turn to the oral evidence before the Select Committee, and there is little to encourage a hope that Government will be induced to abolish the land rates, though there is enough to warrant the

* For previous notes on this subject, see *antè* pp. 26, 36, 71, and 144, and references there given.

Ch. VIII § II. 1848.

assumption that a petition having for its prayer an alteration in the land tenure would meet with attention; and it is a matter of regret that the memorial has not made the land tenure its prominent feature, with a mere allusion to a reduction of the land rents. We cannot but think that the 75 years' lease has had some influence in keeping away respectable Chinese settlers. It is a tenure which they do not understand, and to them one of longer endurance is of more consequence than to Europeans. The latter are a migratory population; in twenty years, of those now on the island not one may remain, and on leaving the Colony most of them will dispose of their property and cease to be interested in it. With the Chinese it is different. Should a respectable class ever be induced to settle, they will be like the Parsees of Bombay; this will be their home; here their money will be invested, and their children brought up and settled; they will therefore expect to hold their property by some more enduring tenure than a short lease."

* * * *

"We close with an extract from Sir Henry Pottinger's despatch to Lord Stanley of date 4th May, 1844, enclosing copy of a letter from "certain landholders." It has generally been supposed that Sir Henry was opposed to a long lease, but from this and other documents it appears not."

"Your Lordship will have seen from the copy of the lease, which forms Enclosure No. 11 to my Despatch, No. 3, of the 23rd January last, that it has been provided for in that document that the buildings shall all become the property of the Crown at the expiration of the 75 years for which the leases are to run; and I am told that this is usually the case in leases of the sort. But there can be no doubt that the strict enforcement of that clause will operate towards deterring people from expending so much money, as they otherwise would do, in improvements, by building quays, docks, etc.: and when I look to the high rates of rent at which land of itself has hitherto let in this island, I cannot doubt but a favourable consideration of the prayer contained in the present application would have the most beneficial effect on the future prosperity of the Colony. I should therefore be glad, did it accord with the views of Her Majesty's Government, to see that clause of the lease so modified as to ensure the owners of the different locations, the certainty of retaining possession, subject to such augmented rates of ground rent as the probable increased value of land will then justly authorize."

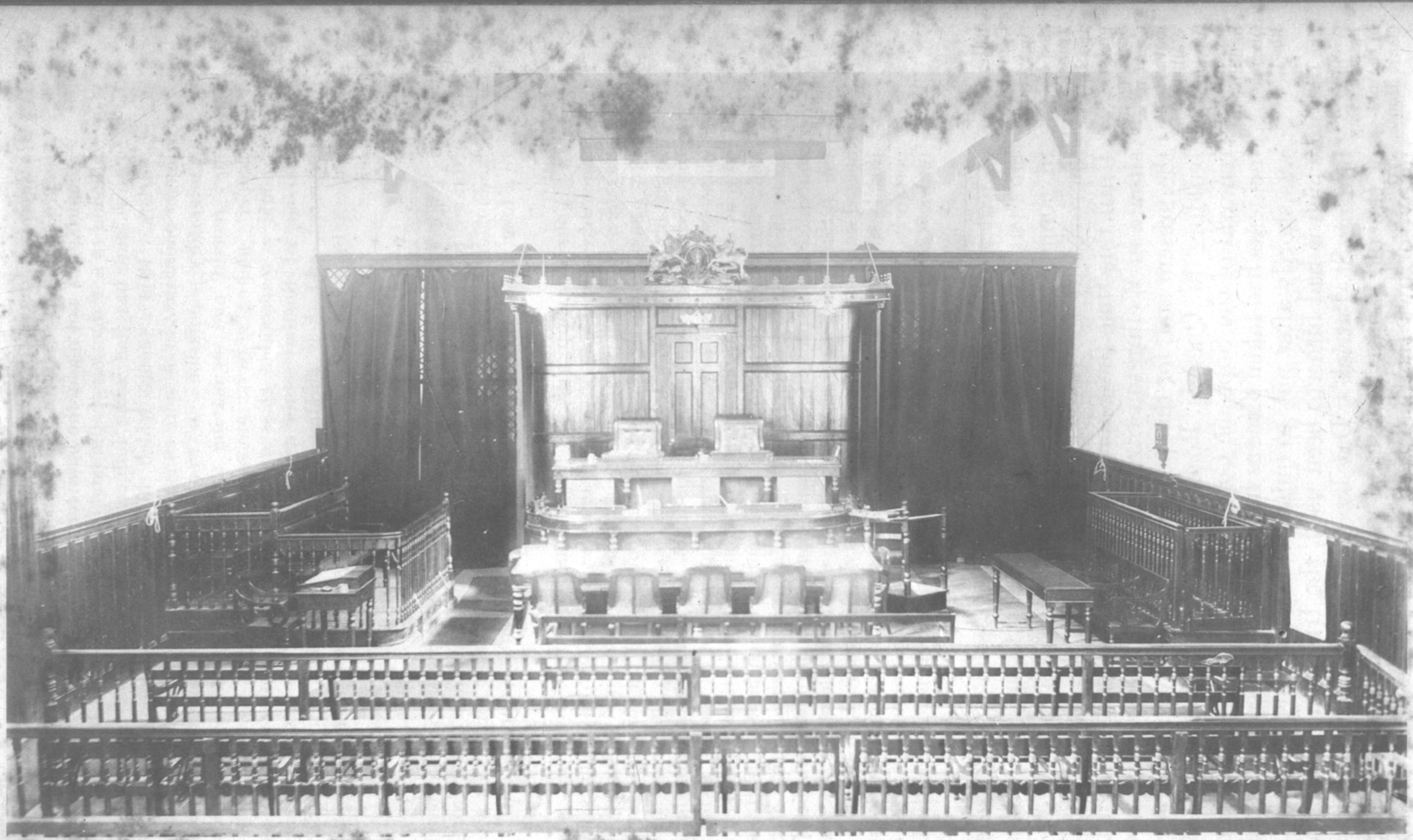
**Rules of Court regulating admission of Translators and Interpreters.**

Rules of Court regulating the admission to practise of translators and interpreters in the Supreme Court, and tables of fees in connexion therewith, passed on the 1st March, were duly approved by the Legislative Council on the 2nd of that month.

**Supreme Court removed from Wellington Street to the present building in Queen's Road.**

Until this time the Supreme Court had been held in a building situate in Wellington Street, and had but recently removed into the present and, for that period of the Colony, more commodious building in Queen's Road. The former building, after the removal of the Supreme Court, and where so many noteworthy incidents had taken place as have been duly recorded in this work, was shortly after put to quite a different purpose than that for which it had hitherto been used, the Irishmen of the place celebrating St. Patrick's Day by giving a public dance in the hall of the old Court House: a worthy manner of washing off the many sorrows that had been enacted in the place, without run-

**The Irish celebrate St. Patrick's Day in the old Court House.**



SUPREME COURT—LARGE ROOM.

ning the risk of incurring any pains, troubles, or penalties for their conviviality.* Ch. VIII § II. 1848.

How badly planned from the commencement, and unsuitable for the purpose, the new Supreme Court House building ever proved to be, the many references, to be found in the records as this work progresses, fully testify.

A military guard, it may here be added, was placed in charge of the building at its opening. †

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* The following is the notice that appeared at the time in connexion with this festivity :—

Bal Masqué.
At the Old Court House,
Wellington Street,
On the evening of St. Patrick's Day,
The 17th March, 1848,
Commencing at Eight o'clock.
Tickets, $4 each, to be had of the several store-keepers, Victoria.

† This was withdrawn in March, 1857—see Chap. XVIII., *infrà*.

# CHAPTER IX.

## 1848.

Arrival of Governor Bonham.--Return of Mr. Sterling, Attorney-General, from leave.—Governor Bonham assumes duty.—His Commissions.—Sir John Davis.—Mr. Sterling resumes duties as Attorney-General.—Mr. Campbell continues as acting Chief Justice.—Mr. Campbell's subserviency to Sir John Davis.—Departure of Sir John Davis.—Manifestation of Captain Baker of the *Pekin*.—Compliment uncalled for.—H.M.S. *Melampus* salutes.—Comments about Sir John Davis.—Disposition of Governors of Colonies.—Sir John Davis as a Governor.—His services in China.—The duties of Governor of Hongkong and Superintendent of the Trade of British Subjects.—The Merchants.—Sir John Davis of retired habits.—His legislation.—Comparison with that of Sir H. Pottinger.—Sir H. Pottinger had no assistance.—Sir John Davis had a complete establishment.—The nature of his legislation.—Odium attached to him anent suspension of Chief Justice Hulme.—Governor Davis' resignation was accepted unhesitatingly.—Departure of Major-General D'Aguilar.—Departure of Mr. McGregor, Consul at Canton.—Mr. McGregor's career in China.—Testimonial before his departure.—Commercial interests of England at Canton.—Mr. Elmslie acts for Mr. McGregor.—Free pardons to European convicts.—Mr. Thomas Wade acts as Private Secretary to Governor Bonham.—April Criminal Sessions held in new Court House.—Too Apo, the informer, charged with extortion.—Police confidence in him.—How he contrived to deceive.—His unsupported testimony implicitly relied on.—Known as an offender by the Police.—Through fear of his influence he is not denounced.—Murder will out.—Mr. Caldwell's attitude.—Conviction of Too Apo.—His insolence to the Court.—The victims of Too Apo.—The services of informers.—The authorities and Too Apo.—Consular Ordinance No. 1 of 1844.—The Law of England.—British subjects.—Jurisdiction of the Court.—The Attorney-General and the practice of trying cases committed outside the harbour, before the Criminal Court.—Mr. Campbell, acting Chief Justice, on the subject.—The Attorney-General and the Acting Chief Justice upon status of prisoners as British subjects under Consular Ordinance No. 1 of 1844.—Prisoners wrongly convicted.--The case of the Portuguese against Mr. Hillier.—Acting Chief Justice Campbell directs jury to non-suit.—How he treated the plaintiffs' attorney.—Mr. Campbell's 'law.'—Mr. Campbell exhausts the patience of suitors and others.—He continues to act as Chief Justice until return of Chief Justice Hulme whose reinstatement is rumoured.—He would not resign in favour of Mr. Sterling, the Attorney-General.--Governor asked to place a 'qualified' person on the Bench.—Comments upon Mr. Campbell.—Considered unfortunate that Governor Bonham had not removed him.—Sir John Davis wished Mr. Campbell to dispose of certain cases.—The case of the Portuguese against Mr. Hillier.—April Criminal Sessions. Whether Supreme Court as now constituted creditable to the Colony.—Attorneys discontinue entering cases for hearing before Mr. Campbell.—Arbitrary conduct of Mr. Campbell.—A Mr. Buchanan is fined for contempt of Court.—His affidavit.—He is imprisoned.—He "must abide the course of the law."—He remained in gaol until released by the Governor.—Convicts sent to Penang.—Governor Bonham's tour.

Chap. IX.

Arrival of Governor Bonham. Return of Mr. Sterling, Attorney-General, from leave.

PUNCTUAL to anticipation, the P. & O. Co.'s Steamer *Pekin*, the very boat by which Mr. Hulme had left Hongkong after his suspension,* arrived on her return voyage, on the 20th March, having on board Governor Bonham and family, with Mr. Sterling, the Attorney-General, who had returned from leave. The boat anchored in the harbour at 12 o'clock, and half-past two being the hour fixed for the landing of the new Governor, preparations were made for receiving him with all the honours due to his high office. Precisely at the hour appointed, the barge approached the wharf and as His Excellency

* See *antè* p. 166.

stepped on shore, he was received with a salute of seventeen guns. He was received on landing by Sir John Davis, General Staveley, and a military guard. A large number of civilians were also present and hailed him with a hearty cheer. From the landing-place to Government House the road was lined with troops, who presented arms as His Excellency passed, accompanied by Sir John Davis. Mrs. Bonham was escorted by the Honourable Mr. A. R. Johnston. On the 21st March, the Governor having taken the usual oaths in Council and assumed the duties of the Government, directed the publication of his various Commissions. That of Chief Superintendent of Trade, under signet and sign manual, was dated the 27th November, 1847, thereby showing that Sir John Davis must have resigned or expressed a wish to resign early in that year, and his other Commissions as Governor and Judge of the Vice-Admiralty Court were dated the 15th and 17th December, respectively. Now installed, high expectations were formed of Mr. Bonham.

Governor Bonham assumes duties.

His Commissions.

Sir John Davis.

On the 21st March it was also notified that Mr. Sterling, the Attorney-General and a member of the Legislative Council, having returned to the Colony, had that day re-assumed the duties of his own office. This notification was not without causing some surprise to the public. It appeared incongruous to see a barrister of eighteen years' standing performing the duties of Attorney-General, while the Bench was occupied by a gentleman who had only been a few years at the bar,* and the absurdity was all the greater when it was considered that the junior on the Bench was only there at all by virtue of his having been appointed to act for his senior as Attorney-General during his temporary absence in England.† This circumstance, however, as is usual in such cases, had evidently some object in view, and Mr. Campbell, moreover, had shown his subserviency to Sir John Davis, who naturally showed disinclination to remove him.

Mr. Sterling resumes duties as Attorney-General.

Mr. Campbell continues as acting Chief Justice.

Mr. Campbell's subserviency to Sir John Davis.

Sir John Davis sailed for England by the P. & O. Steamer *Pekin* on the 30th March. About one o'clock the garrison was drawn out and lined the road from Government House to the wharf, where a guard of honour was stationed. Sir John passed down the line, in company with the Governor, the Secretaries, and other officials, and was met at the Queen's Road by the General and his staff and the members of the several departments. He embarked under the usual salute, the Governor, Mr. Bonham, and the principal officials accompanying him on board. As he stepped into the boat, the officials raised a faint cheer, but few of the inhabitants

Departure of Sir John Davis.

* Mr. Campbell had only been called to the Bar on 22nd November, 1844—see Roll of Barristers, App., *infrà*.

† See *antè* Chap. V § 1, p. 121.

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1848.

Manifestation of Captain Baker, of the *Pekin*. Compliment uncalled for.

were present to swell the sound, and those who were attracted by curiosity to see the ex-Governor embark did not join in the official demonstration. Captain Baker, of the *Pekin*, manned the yards of the steamer, and had five blacks dressed out in scarlet to receive Sir John Davis. This compliment was considered uncalled for and in bad taste on the part of the Captain, but surely such a trifling affair should hardly have been questioned or considered worthy of objection, as it was at least agreeable to Captain Baker himself. As the steamer passed down the harbour, a salute of seventeen guns were fired by H.M.S. *Melampus*. Thus departed the man who had made things so uncomfortable for most people during his government of the Colony. Sir John Davis, in consequence of his treatment of Mr. Hulme and other matters touched upon herein, had made himself quite notorious in the Colonies, the press of which blamed him, and while saying that the evil he had done would live after him, and describing what "might have been a flourishing and happy Colony." in reference to Hongkong, "as a hell upon earth,"—added that "under the gentle rule of Mr. Bonham the inhabitants of that Barataria might now hope for better days."

H.M.S. *Melampus* salutes.

Comments about Sir John Davis.

Disposition of Governors of Colonies.

It sometimes happens that, in our distant Colonies, men entrusted with administrative prerogatives betray dispositions which are never suspected to exist in them previously, and give the rein to passions, follies, and indiscretions which, when repeated at Home, seem incredible.

Sir John Davis as a Governor.

Sir John Davis was represented to be one of these men—arrogant, arbitrary, and rash in many of his undertakings, and these failing through their own utter inefficiency as much as from the opposition they encountered from men of sober judgment who calculated consequences as well as means,—he was unscrupulous as to the means of excusing his own errors and throwing the blame of his blunders upon the shoulders of other parties. He had arrived in Hongkong on the 7th May, 1844, as successor to Sir Henry Pottinger.* His services in China, however, reached to a much earlier date, having commenced in 1813, under the East India Company, and continued to the close of its Charter in 1834, in which year he was appointed second Superintendent of Trade to Lord Napier. On the death of that nobleman in October following, he succeeded as Chief Superintendent; but a few months afterwards he resigned and sailed for England in January, 1835. In 1844, he returned as Plenipotentiary, Superintendent of Trade, and Governor of Hongkong. In the discharge of the duties of these high offices his policy received the uniform support and approbation of the successive ministries under whom he acted,

His services in China.

* *Antè* Chap. II., p. 47.

but met with local opposition, remonstrance, and abuse such as few representatives of the Sovereign in distant lands had withstood. The former could only be secured by carrying out the instructions of the Home Government, or by the successful exercise of discretionary powers, while the latter would seem to be in a greater or less degree the fate of all governors, but they were, in the case of Sir John Davis and his predecessor, aggravated by the peculiarity of the circumstances in which they had been placed.

The duties of Governor of Hongkong and Superintendent of the Trade of British Subjects.

The most prominent of these circumstances appeared to be, as has before been remarked, first, the double and sometimes opposing authority under which, as Governor of Hongkong and Superintendent of the Trade of Her Majesty's subjects in China, the same individual was to act, the odium attached to the exercise of the one office being reflected to the other; and, secondly, the impatience of control entertained by a body of merchants who in former times, according to the testimony of one of themselves, were amenable to no law, with the subsequent influx of young men, many of whom had never taken a part in public affairs before they left Home. Added to these causes, in the case of Sir John Davis, the reins of Government were held by one of retired habits, who preferred the seclusion of his study to social intercourse, to which last circumstance the intenseness, if not the extent, of his unpopularity was in a great measure to be attributed.

The Merchants.

Sir John Davis of retired habits.

His legislation.

In his legislation, Sir John Davis was charged with indulging a passion for law-making, ignorant of the wants and regardless of the interests of his countrymen in China; and in Parliamentary Committees, as well as in newspapers, it was alleged that the Ordinances enacted by him had, besides being excessive in number, been so crude in concoction and injurious in tendency, that it had been found necessary for the Home Government to disallow or alter the great majority of them. Legislation had been of two sorts—Colonial and Consular, and the amount of each from the constitution of the Government up to January, 1848, had been Colonial forty-nine, Consular thirteen, in all sixty-two. The first Ordinance (a Consular one) was dated 24th January, 1844, and during the subsequent three months, Sir Henry Pottinger enacted seventeen—twelve Colonial and five Consular. Of these nine were disallowed, repealed, or amended. During the remainder of that year, twelve Ordinances were passed by Sir John Davis, of which six were disallowed, repealed, amended, or superseded; so that out of the entire body of twenty-nine Ordinances passed in 1844, only fourteen remained in full force. The result may have been in a great measure accounted for by the fact that legislation for a

Comparison with that of Sir H. Pottinger.

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new Colony and trade so peculiarly circumstanced must, in many respects, have been experimental. Subsequent to 1844, a marked improvement took place in the vastly-diminished proportion of abortive measures; so that during the years 1844, 1845, 1846, and 1847 thirty-three Ordinances were passed by Sir John Davis, of which up to January, 1848, only five had been repealed or amended. Thus while in the first three months, Sir Henry Pottinger produced seventeen Ordinances, fifty-three per cent. of which were set aside, in the last three years Sir John Davis produced thirty-three Ordinances, of which not quite fifteen per cent. were annulled or altered, none of these five Ordinances, it is worthy of remark, having been disallowed by the Home Government, but in most cases altered or extended in their provisions so as to meet the growing or ascertained requirements of the community. But although Sir Henry Pottinger's legislation was bad, he had an excuse of which Sir John Davis could not avail himself. Sir Henry Pottinger had literally no assistance in the performance of his duties. His secretary was an Assistant Surgeon in the Bombay Army; his financial secretary, the mate of a ship; his legal adviser, a wandering lawyer; his judge, an Indian soldier; his assistant judge, the second mate of a country ship; and his lieutenant-governor, Major-General D'Aguilar! On the other hand, Sir John Davis brought with him a complete establishment (excepting always a Police Magistrate); Colonial Secretary, Mr. Bruce; Treasurer, Mr. Martin; Auditor-General, Mr. Shelley; Chief Justice, Mr. Hulme. Sir John Davis' wretched course of legislation was dictated by his own tyrannical disposition. Registration Ordinances, Branding Ordinances, and fiscal taxes were all the result of his own conception. On his arrival in the Colony he had received a kindly reception, and as an untried man he was entitled to it. One subject which had excited greater odium than any other act of his was that regarding the suspension of Chief Justice Hulme. His actions and motives in this matter were said to have been exaggerated or misrepresented, but *that* he ought to have foreseen when he consented to enter upon an investigation which involved the necessity of invading the sanctities of private life. His resignation was reported to have been unhesitatingly accepted, and the new Governor, it was hoped, would prove a man of greater sagacity, more prudence, with a more effectual command over his temper, prejudices, and predilections than his predecessor.*

**Sir H. Pottinger had no assistance.**

**Sir John Davis had a complete establishment.**

**The nature of his legislation.**

**Odium attached to him anent suspension of Chief Justice Hulme.**

**Governor Davis' resignation was accepted unhesitatingly.**

* Sir John Davis, Bart., K.C.B., died on the 13th November, 1890, at his residence, Hollywood Tower, Westbury-on-Trym, near Bristol. He had reached the patriarchal age of ninety-six, having been born on the 16th July, 1795. The value of his personal estate was sworn at £167,898. His various publications regarding China are still standard works and at the same time are very readable. His wife had predeceased him on the 7th September, 1866.

Departure of Major-General D'Aguilar. Departure of Mr. McGregor, Consul at Canton. Mr. McGregor's career in China.

The departure of Major-General D'Aguilar in February, followed by that of Sir John Davis and now of Mr. F. C. McGregor, the latter leaving for England by the same steamer as the former, all of them having borne prominent parts in the important transactions of the last four years, was a strange coincidence. Mr. McGregor had held the important office of Consul at Canton for nearly four years. His experience in Consular duties (excepting his muddle in the Compton Case), application to business, and affable manner all qualified him for the appointment he held; but unfortunately for himself and for British interests, he had had to submit to the dictates of the Superintendent of Trade at Hongkong. This had embittered his existence and been the means of estranging him from his countrymen, who cheerfully testified to his unwearied assiduity and earnest desire to protect British interests. Before leaving Canton he was presented with a testimonial and a piece of plate by the Parsee and Indian merchants of Canton. In his reply Mr. McGregor said—"he had had to contend with many and serious difficulties, and honestly confessed he had not always been successful in overcoming them, and that he had committed errors which he sincerely regretted, but had always endeavoured to do what appeared to him just and right." It was not known if Mr. McGregor would return to China, but if he did, it was hoped it would be in a different capacity. A Superintendent of Trade resident at Hongkong did not appear to be a person fit to look after the commercial interests of England at Canton. Mr. Adam Wallace Elmslie, the Vice-Consul at Canton,* was appointed on the 1st April by Her Majesty's Plenipotentiary to officiate for Mr. McGregor during the latter's absence. In October, 1848, the news reached the Colony that Mr. McGregor had retired from the service upon pension, to settle in Denmark, where, for many years before, he had held a Consular appointment.

Testimonial before his departure.

Commercial interests of England at Canton. Mr. Elmslie acts for Mr. McGregor.

Free pardons to European convicts.

On the 1st April, the Governor also granted a free pardon to Robert Rawnsley, convicted of assault in October, 1847, and sentenced to imprisonment for one year, and to George Wells, convicted of misconduct as a Police Constable in March last, and sentenced to imprisonment for two months. On the 8th April, Mr. Wade, Assistant Chinese Secretary and Interpreter to the Governor, was appointed by the latter "to perform the duties of Private Secretary until further orders," the appointment dating from the 21st March.

Mr. Thomas Wade acts as Private Secretary to Governor Bonham.

April Criminal Sessions held in new Court House.

The April Criminal Sessions was held in the new Court House, in the Queen's Road, on Saturday, the 15th April. The first case was that of the notorious Too Apo, one of the pirates engaged at Chimmo Bay who was admitted as Queen's evidence at the trial of the case at the Admiralty Sessions in April,

Too Apo, the informer,

* Previously Private Secretary to Sir Henry Pottinger—see *antè* p. 99.

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charged with extortion. Police confidence in him.

1847.* He was now accused of extorting money from one Wong A Moon, being armed with a pair of pistols. He pleaded not guilty. For a year past this ruffian had been allowed to cut a prominent figure in the Supreme Court as an informer against alleged accomplices, and so highly had his services been esteemed that, with a view perhaps of saving truth and giving an appearance of vigilance to the judicial department, he was immediately taken upon the staff of the Police as chief detector of pirates.†

How he contrived to deceive.

At every Sessions thereafter, he contrived to offer up two or three victims, and his credit became such that in his case the confirmation usually required in the case of an approver was dispensed with, and his unsupported testimony against pretended accomplices implicitly relied on,‡ and prisoner after prisoner condemned.

His unsupported testimony implicitly relied on.

Known as an offender by the Police.

Through fear of his influence he is not denounced.

That Too Apo would abuse the power thus thrust into his hands appeared very evident, and, as events showed, this man was known by the Police to have actually been guilty of the very offences it was supposed he would be induced to commit, and yet he was still kept on in the Police and his 'services' made use of. Scarcely one of those accused by him but had a likely story to tell of having been called upon to pay money, or, as in one case, to surrender a sweetheart, with the alternative of being charged with piracy! And these unfortunates, ignorant of the forms of our Courts, and perhaps contemplating that their simple but probable declarations would go for something against the unsupported testimony of a person admittedly infamous, had as usual neither witnesses to speak for nor counsel to defend them. At the Admiralty Sessions held on the 24th January last, in connexion with the Chimmo Bay piracies, another man denounced by Too Apo had also been indicted, but from some imformality, some document having been mislaid, he was not then brought to trial, but unfortunately for himself he was remanded to Gaol till the next sitting of the Court. He had thus suffered three months' imprisonment, but had thereby probably escaped either being hanged or being banished for life, which might have been his fate had he been tried along with the twelve others arraigned on the occasion mentioned and had not Too Apo's own career fortunately now been cut short. Upon Too Apo's conviction, as hereinafter mentioned, this man was discharged, while those formerly convicted on his evidence had either been hanged or were now undergoing their sentences. What rendered their cases more pitiful and striking was the fact now brought out,—but only at Too Apo's trial, be it said to the discredit of the Police Officer concerned,—that at the time Too Apo had last

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* *Antè* Chap. VII., p. 139.
† *Id.*
‡ *Id.* p. 174.

figured in the witness box against them, it was known, as stated before, that the ruffian informer had been extorting money under threats of charging other men with piracy! 'Murder will out,' and at length he was brought to justice. He was first charged with having on the 5th October, 1847, gone armed on board a boat and demanded $45 from one Wong A Moon before mentioned, threatening to shoot him in case of refusal, and stating, also, that, being now in the pay of the Government, Wong A Moon's life was in his hands and would only be saved by payment of the demand he made. Under this threat he obtained $20 and afterwards $25, probably all the poor man possessed, but possibly for that very reason Too Apo fixed upon Wong A Moon as the next manifestation of his zeal in the public service. The Jury in this case took a long time to deliberate, but as one of their number, it is recorded, felt great reluctance to convict an undefended prisoner on mere Chinese evidence, the Judge told them, if they had a doubt, they ought to give the prisoner the benefit of it, and he was accordingly acquitted, but immediately afterwards put upon his trial before the same Jury on a charge of having on the 14th January, 1848, gone armed to one Chum A Hee, a boatman, and demanded $100 from him, under threat of charging him with piracy. This apparently had been the second demand on Chum A Hee, who, having no more money, told Too Apo so, and then appealed to Mr. Caldwell, the Assistant Superintendent of Police, (who had taken and been given so much credit in connexion with these Chimmo Bay piracies). Mr. Caldwell directed him not to pay Too Apo any money, but yet took no steps either to prosecute this infamous character at once or to get rid of him. At the trial it appeared that, in the month of October, 1847, Too Apo had gone to Chum A Hee similarly armed and, again referring to his character as a servant of the British Government, had demanded $80 with the usual threat. The man, having only $50, raised the remainder by borrowing, and thus escaped for a time. It appeared that Too Apo, not content with the $80 'blood money' formerly got from this man, now demanded $100, as he said, for Mr. Caldwell, but, finding Chum A Hee run dry and obstinate, charged him with being concerned in the Chimmo Bay piracies.

Murder will out.

Mr. Caldwell's attitude.

Being found guilty, Too Apo was sentenced to three years' imprisonment with hard labour. Strange to say, under such atrocious circumstances, the third count was not proceeded with, nor do the records disclose that the conduct of the Police in continuing to employ this arch-villain after they had themselves reason to doubt of the correctness of this man's proceedings met with any reproof either on the part of the public or of the

Conviction of Too Apo.

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1848.

His insolence to the Court.

After receiving sentence Too Apo had the effrontery to say to the Court that when his three years were finished, he hoped they might give him three years more and afterwards hang him,—thus showing a very just appreciation of his own deserts, which certainly ought to have been discovered long before his services had been secured for so very little. It was now hoped that the Governor would exercise his prerogative of mercy and extend a free pardon to those unfortunate victims of Too Apo and who had been convicted entirely upon his unsupported testimony.

The victims of Too Apo.

The services of informers.

Justice cannot always be satisfied without the services of such characters; but it is at all times difficult to deal with an informer, and it is particularly so with a Chinaman confessedly of a dangerous character. The authorities appeared to have been alive to the dangerous power Too Apo held and the bad use he might put it to, as it appeared he had been told "not to charge any more people with the Chimmo Bay piracy!"

The authorities and Too Apo.

The other cases tried at this Sessions were of no very great interest in themselves, but two of them gave rise to characteristic incidents which will bear reporting. At the last Criminal Sessions three Chinese were tried, found guilty, and sentenced to transportation for robbery with arms on board a boat outside the harbour, and, in order to avoid the necessity of holding an Admiralty Court, the prisoners had been indicted under the Consular Ordinance No. 1 of 1844. This Ordinance provided, first, that the law of England shall extend to all *Her Majesty's subjects* within the dominions of the Emperor of China or within any ship or vessel at a distance of not more than one hundred miles from the coast of China; secondly, that Courts of Justice at Hongkong were to have jurisdiction over *Her Majesty's subjects* within the dominions of the Emperor of China or within any ship or vessel, etc.; and, thirdly, that no objection was to be allowed to *such British subjects* against the locality of the jurisdiction of the Courts of Hongkong. The prisoners, having been residents of Hongkong, were therefore held to come under the denomination of British subjects, which was considered more than doubtful, the men having neither been born within the British dominions nor proved to have been natives at the time the island was ceded, nor were they naturalized subjects of the Queen. Other cases of the same description were brought before the Court this Sessions. Upon the first being called, the Attorney-General, Mr. Sterling, stated that during his absence he understood a practice had been introduced of trying robberies committed outside the harbour before the Criminal Court, under a local Ordinance, and he put it to the Court whether the present

Consular Ordinance No. 1 of 1844.

The Law of England. British subjects.

Jurisdiction of the Court.

The Attorney-General and the practice of trying cases committed outside the harbour before the Criminal Court.

case should be so tried. The acting Chief Justice, Mr. Campbell, explained that the course had been adopted in order to prevent trouble, and to save the summoning of a Grand Jury,—both undoubtedly commendable reasons, but which, if sound, would practically have justified the abolition of the Grand Jury. The case was postponed, but immediately after another was tried, when the acting Chief Justice, taking the Attorney-General's hint, observed that the men were not British subjects, but on being told they had been arrested in the island, seemed to consider that as quite satisfactory. Afterwards, however, he directed the Jury to acquit the prisoners, "because their crime had been committed beyond the harbour."

Mr. Campbell, acting Chief Justice, on the subject.

*Attorney-General.*—"Similar cases have been tried before."

*Acting Chief Justice.*—"If we have been wrong before, we must not persist in it."

The Attorney-General and the Acting Chief Justice upon status of prisoners as British subjects under Consular Ordinance No. 1 of 1844.

An admirable doctrine, certainly, if it had been acted up to, and it was therefore hoped that the prisoners formerly tried and, as it now appeared, "wrongly" convicted, would soon be released and be allowed their remedy, supposing such a thing to have been possible with the number already transported.

Prisoners wrongly convicted.

On the 26th April, the case of the Portuguese now commonly known as 'D'Assis and Pacheco,'—(though, as mentioned in August, 1846, it would appear as if Pacheco and De Mello had been the parties arrested)*—against Mr. Hillier for $25,000 damages, for false imprisonment, came before the acting Chief Justice, Mr. Campbell. Originally the plaintiffs' attorney had set the cause down for hearing for the 14th, but suspecting afterwards or hearing that Mr. Campbell, when acting Attorney-General, had previously expressed his opinion to the Government upon the case, countermanded his notice of trial, upon which the Court felt it necessary and expedient that the case should be gone on with and appointed this day (the 26th) for hearing it, and for which day the defendant's attorney set it down for trial. The plaintiffs' attorney, however, now asked for an adjournment on an affidavit stating that their principal witness was absent from the Colony, being ill in Macao, and also produced a medical certificate. Without waiting to see whether the defendant's attorney had any objection or not to the application, on hearing the affidavit read the acting Chief Justice refused it, and the Jury being then sworn, were directed to non-suit the plaintiffs, in spite of the opposition of the plaintiffs' attorney, who stated that to force on the case was tantamount to a denial of justice. For this he was reprimanded by the Bench, and, says a report of the case, "the attorney was treated to what

The case of the Portuguese against Mr. Hillier.

Acting Chief Justice Campbell directs jury to non-suit.

How he treated the plaintiffs' attorney.

* *Antè* Chap. III § III., p. 105.

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1848.

was intended should be a learned dissertation on what the nature of the pleadings should have been in an action of this kind, and then followed a long address dwelling at length on what the plaintiffs' counsel should have done; how he would have drawn their pleadings, and, warming with the subject, gave the plaintiffs' attorney a setting down for having brought the action at all. Some very bad law was quoted and delivered in a very placid manner. On concluding these remarks against the plaintiffs' attorney, in order, it was supposed, to show how equally justice was administered, the defendant's attorney now also received a censure for want of due diligence to his client; here, however, the Jury met with what they little expected, in the attorney firmly giving a refutation to His Lordship's imputations, with a confutation of His Lordship's law."

Mr. Campbell's 'law.'

Mr. Campbell exhausts the patience of suitors and others. He continues to act as Chief Justice until return of Chief Justice Hulme, whose reinstatement is rumoured. He would not resign in favour of Mr. Sterling, the Attorney-General. Governor asked to place a 'qualified' person on the Bench. Comments upon Mr. Campbell.

Mr. Campbell had now begun to exhaust the patience of those whose business brought them in contact with him. Notwithstanding the arrival of Mr. Sterling last March, Mr. Campbell had, as before stated, continued to sit on the Bench as acting Chief Justice,* and was to keep his seat until the return of Chief Justice Hulme,—the news of whose reinstatement had now reached the Colony to the great satisfaction of one and all,—unless the Governor, Mr. Bonham, took the responsibility of removing him notwithstanding Sir John Davis' wishes in the matter, but as Mr. Hulme was expected in June and the Court did not open till July, if Mr. Campbell had not the grace to resign in favour of his senior, Mr. Sterling, it might not be worth while to displace him; should, however, circumstances prevent Mr. Hulme's return so soon as was expected, it was hoped that the Governor would not hesitate to place a "qualified" person on the Bench. Mr. Campbell had never held other than acting appointments, and when the state of the Attorney-General's health necessitated a visit to Europe, Mr. Campbell was nominated to perform the duties for half the salary. So far this had appeared unavoidable, but when Mr. Sterling returned to the Colony, a man with eighteen years' experience at the bar, it was presumed that the junior of four years' experience would have had the good sense to abdicate in his favour, resuming his former acting appointment of Attorney-General. But this, with the support of Sir John Davis, Mr. Campbell had refused to do, and it was unfortunate, it was said, that the present Governor had not removed him at once. This led to the imputation that Sir John Davis, being interested in certain cases then pending before the Court, was anxious that they should be disposed of before his nominee had retired from the Bench, one of these cases being that of the Portuguese before

Considered unfortunate that Governor Bonham had not removed him. Sir John Davis wished Mr. Campbell to

* *Ante* p. 185.

mentioned against Mr. Hillier which had come before the Court on the 26th of this month. Under such circumstances it is not astonishing that such imputation should have been made,—imputations which spoke very little in favour of the acting Judge.

dispose of certain cases. The case of the Portuguese against Mr. Hillier.

The proceedings at the Criminal Sessions held on the 15th April had also enabled litigants to judge whether, as now constituted, the Supreme Court was creditable to the Colony, and it was now reported that the attorneys had discontinued entering cases for trial, pending the return of Mr. Hulme. As an instance of the arbitrary conduct of Mr. Campbell, who apparently was then under thirty, the case of a Mr. Buchanan was quoted. This person, for failing to appear as a Juror at the Vice-Admiralty Court last December Sessions, was fined $20 for contempt of Court, though he had filed an affidavit stating why he had been unable to attend. He was, moreover, under age at the time and consequently ought never to have been returned on the Sheriff's panel. But no notice was taken of this, and on the 13th March a writ was issued to enforce payment, and Mr. Buchanan imprisoned in the Debtor's Gaol on that day. In vain did he petition for his release, the acting Chief Justice endorsing on his petition that "Mr. Buchanan must abide the course of the law," without moreover, which greatly aggravated the matter, any period of imprisonment being stated in default of the payment of the fine! Mr. Buchanan being unable to pay the fine remained imprisoned for upwards of two months when at last, upon the case being brought to his notice through the press, the Governor, on the 19th May, took the initiative of releasing him.

April Criminal Sessions. Whether Supreme Court as now constituted creditable to the Colony. Attorneys discontinue entering cases for hearing before Mr. Campbell. Arbitrary conduct of Mr. Campbell. A Mr. Buchanan is fined for contempt of Court. His affidavit. He is imprisoned. He "must abide the course of the law." He remained in gaol until released by the Governor.

On the 28th April tenders were called for for a passage to Penang for twenty-three convicts. On the 29th Governor and Mrs. Bonham, accompanied by General Staveley and others, proceeded in H.M.S. *Medea* to the Bogue and afterwards visited Canton, returning to Hongkong on Tuesday evening, the 2nd May.

Convicts sent to Penang. Governor Bonham's tour.

# CHAPTER X.

## 1848.

Reinstatement of Chief Justice Hulme.—Earl Grey's act of justice.—Repudiation of Mr. Hulme's persecution never doubted.—Mr. Hulme's case excited sympathy in the Colonies.—View of case at the present time.—Charges malignant falsehoods.—Disgrace now fell on the accuser.—The conduct of the Governor of any colony.—Governor Davis' secret accusations not confined to Chief Justice Hulme.—Agitation sets in against Mr. Campbell's retention on the Bench.—Mr. Campbell's inexperience.—Motives of delicacy on the part of the new Governor.—No attorney entered the Court.—Comments upon Mr. Campbell.—Ship *Mor* leaves for Penang with convicts.—Those convicted on the evidence of Too Apo.—Commodore Plumridge.—Arrival of Chief Justice Hulme after reinstatement.—Sir John Davis an 'arch-hypocrite.'—Quick return of the Chief Justice.—Deep feeling of respect.—Government Notification restoring Chief Justice to office. Valedictory.—Retributive justice.—Chief Justice Hulme. Comparison with Sir John Davis.—Governor Bonham leaves for northern consulates.—Major-General Staveley acts.—Sitting of the Admiralty Court.—The Commissioners do not attend.—Chief Justice discharges the Jury.—Comments.—The Jurors.—The case of Mr. Buchanan compared.—The sitting of the Admiralty Court after the adjournment.—Mr. Campbell after the return of Chief Justice Hulme.—He is cast into oblivion.—The description of him.—His conceit.—Unfitted for his position.—Sir John Davis interested in Mr. Campbell.—The case against Mr. Hillier.—The case against Mr. Tarrant.—Major Caine's reputation at stake.—General comments upon Mr. Campbell and his official career in Hongkong.—Mr. Campbell's order for cutting off 'tails' and shaving off crowns of Chinese heads.—Governor Bonham ordered practice to be discontinued.—Mr. Campbell's erroneous decisions.—*Re* Nuncheong.—Nuncheong *v.* Consul McGregor.—Sir John Davis' model lawyer.—Melancholy condition of Supreme Court as presided over by Mr. Campbell.—Mr. Campbell as Attorney-General.—His nocturnal visits to the Police Offices.—His departure from Hongkong. 'The undisguised contempt of the community.'—Return of Governor Bonham.—Land.—Reply of Earl Grey to memorial of residents. Ground rents.—Governor Bonham's despatch. Extension of term of leases.—Earl Grey's reply.—Return of Mr. Inglis, the Registrar-General, from leave.—Victims of Too Apo pardoned.—Governor Bonham eulogized.—Another victim of Too Apo pardoned.—Piracy Case against Captain Cole and crew of the schooner *Spec*.—No true bill.—Re-appointment of Mr. Mercer as a member of the Legislative Council.—The attorneys and solicitors petition the Chief Justice on the subject of the Court fees.—Fees prescribed by *Regula Generalis*.—Inspector Smithers and other Police drowned.—Further charges against Mr. Holdforth, the Sheriff.—Chief Justice Hulme's fall from horseback. His popularity.—Session of the Vice-Admiralty Court.—Case against Captain Cole thrown out.—Police scrimmage with Chinese in the harbour.—Police seek naval assistance.—Chinese killed. 'Tails' cut off.—Verdict at inquest.—Home and Indian view of the case.—October Criminal Sessions.—Convict soldiers transported to Cape of Good Hope.—Case of the Portuguese against Mr. Hillier. New trial granted by Chief Justice.—Chief Justice Hulme disposed to grant plaintiffs every facility.—Summary of the case.—Chief Justice's decision.—Verdict for the defendant.—No imputation on the characters of the plaintiffs.—Mr. McSwyney and his Chinese wife Aho.—How he was duped into marrying her.—He ill-treats his wife and turns her out of doors.—He charges her with larceny. Mr. Hillier, doubtful of his law, leaves matter to the Attorney-General.—Mr. Sterling's views. Mrs. McSwyney is discharged by proclamation.—Resignation of Mr. N. D'E. Parker as Coroner.—Messrs. Hillier and Holdforth 'Joint-Coroners.'—Execution of Mo Yeen for murder committed in November, 1845.—How his capture was effected.—His indifference on the scaffold.—Judicial features of 1848.

Chap. X.

**Reinstatement of Chief Justice Hulme.**

THE reinstatement of Chief Justice Hulme by the Secretary of State, rumours in regard to which had been current in the Colony from the time of the arrival of Governor Bonham, was now confirmed, and his return was expected in June. Earl Grey in reinstating Mr. Hulme did an act of justice for which His Lordship's countrymen in this part of the world could not but feel grateful.

**Earl Grey's act of justice.**

1848.

That the iniquitous persecution by Sir John Davis and his *clique* would be repudiated by Her Majesty's Government was never for a moment doubted, but the people here were under the impression that the victim of petty tyranny would probably receive another appointment in another colony and would not return to Hongkong again Mr. Hulme's case seemed to have excited sympathy in the British Colonies and in India. Certainly, whatever might have been the nature or extent of his errors, the manner in which the case was investigated was as unbecoming as could well be imagined. At this distance of time, however, to be charitable, one feels disposed to look upon Sir John Davis' behaviour as a case of *false pride*, which in any event goes towards aggravating the offence a hundred fold in its result. He had secretly and falsely charged the Judge and was told to prove his charges, but this was a contingency for which the 'pawkey' Baronet was not prepared, and, to get out of the difficulty, he fell back upon the suggestion that since the return of the Judge's wife, Mr. Hulme had improved and therefore he did not think an investigation necessary.* In this way he showed how weak he himself considered his case to be and therefore how wrong he had been, but, being evidently a person of no moral courage, he would not apologize and allowed his *false pride* to carry him to a pitch of unsurpassed vindictiveness, truth, honour, humanity, and every other virtue giving way before his malignant desire to ruin the man who had refused to sacrifice the integrity of the Bench. In reinstating Chief Justice Hulme, Lord Grey had now virtually declared that the charges were malignant falsehoods. It was therefore with great satisfaction that it was learnt that Sir John Davis had signally failed to effect his malicious purpose. His intended victim had been most triumphantly acquitted of the gross offences laid to his charge, and the disgrace which would have followed conviction now descended on the head of the accuser, and was perhaps one of the most humiliating that could occur.

Repudiation of Mr. Hulme's persecution never doubted.

Mr. Hulme's case excited sympathy in the Colonies.

View of case at the present time.

Charges malignant falsehoods.

Disgrace now fell on the accuser.

The conduct of the Governor of any one Colony and the consequences attendant upon such conduct were of necessity interesting to *all* colonies, and these now joined in the cry of "Shame! Shame!" which, it was said, would now greet Sir John Davis wherever he went, for conduct in so many instances unbecoming the character of a gentleman and a man of honour. His secret accusations had not been confined to the Chief Justice, and it was to be regretted that others whom he had also accused had not had the same opportunity given them of refuting the charges.

The conduct of the Governor of any colony.

Governor Davis' secret accusations not confined to Chief Justice Hulme.

Chap. X.

1848.

**Agitation sets in against Mr. Campbell's retention on the Bench.**

Strong comments now again appeared anent the continued retention of Mr. Campbell, who had taken such an active part in procuring Mr. Hulme's suspension, upon the Bench. Certainly, it was an act of injustice to Mr. Sterling, and equally unjust towards those who were compelled to seek redress before the Court of Civil Law. There were yet doubts as to whether Mr. Hulme would return in June, and, should he not come back, it was fervently hoped that the Governor would take the appointment of another acting Chief Justice into his serious consideration. At that moment, it was alleged, the Colony was virtually deprived of a Court of Justice, and without seeking for other causes, Mr. Campbell's inexperience was an ample apology for his removal, and it was a pity that this was not done immediately upon Mr. Sterling's arrival, as the indecorous relative positions occupied by Mr. Campbell and himself struck every one who had entered the Court during the last Sessions. Perhaps motives of delicacy had hitherto prevented the Governor from interfering with the interim appointment of a nominee of his predecessor, but Mr. Bonham could not but have been fully aware of the incapacity of Mr. Campbell as a Judge, and that his *opinions* as a lawyer were such as might have emanated from Mr. Briefless, of *Punch*. Recently not one attorney had entered the Court, which fact the Governor must have known also, apart from the reduction in the Court fees. Under the circumstances it was a matter for regret that Mr. Campbell's friends had not prevailed upon him to resign in favour of Mr. Sterling immediately on the latter's return. As acting Attorney-General he would have occupied a respectable position and escaped not only the legitimate censure of the press but also observations calculated "to bring the Bench into contempt as bearing upon the mental capacity and personal dignity of the occupant."

**Mr. Campbell's inexperience.**

**Motives of delicacy on the part of the new Governor.**

**No attorney entered the Court.**

**Comments upon Mr. Campbell.**

**Ship *Mor* leaves for Penang with convicts.**

On the 28th May, the ship *Mor* left Hongkong for Penang and India with twenty convicts on board. One of these men, who had evidently effected his escape, being afterwards found at large in the Colony, was apprehended and sentenced at the June extra Criminal Sessions of 1854.* Three other convicts, who were also to have left by the *Mor*, and who had been convicted upon the evidence of Too Apo, the informer, were kept back in order that the Governor might have an opportunity of seeing the depositions and inquiring into their cases. Two of these prisoners had been convicted on the 24th January, and one on the 25th of the same month.

**Those convicted on the evidence of Too Apo.**

**Commodore Plumridge.**

H.M.S. *Cambrian*, carrying the pennant of Commodore Plumridge, anchored in the harbour of Hongkong on Tuesday, the 13th June. Since the demise of Admiral Inglefield early in the

* See Chap. XV., *infrà*.

year, Commodore Plumridge had been in command of the fleet. Chap. X.

1848.

At length Chief Justice Hulme, whose reinstatement by the Secretary of State had been announced weeks before and on hearing which before his departure from the Colony, it is said Sir John Davis rubbed his hands exclaiming—"Glorious news; I'm delighted to hear it," which gained him the further appellation of "arch-hypocrite,"—arrived in the Colony by the P. & O. Co.'s Steamer *Braganza* on the 16th June. He returned to Hongkong after an absence of less than six months, having left the Colony, it will be remembered, on the 30th December last.* A very quick return, it will be admitted, considering the lengths and discomforts of passages to Europe in those days and which but few "habitual drunkards" could certainly have withstood. During Mr. Hulme's short absence many changes had taken place, many false reports had been put in circulation; but the deep feeling of respect which the community entertained for him had never been shaken, and those who grieved in his adversity now rejoiced in his prosperity and welcomed him back with the most cordial regard. On the day of his arrival appeared the following Government Notification:—

Arrival of Chief Justice Hulme after reinstatement. Sir John Davis an 'arch-hypocrite.'

Quick return of the Chief Justice.

Deep feeling of respect.

Government Notification restoring Chief Justice to office.

"The Honourable Chief Justice Hulme, having returned to Hongkong, is, by the direction of the Right Honourable Her Majesty's Principal Secretary of State for the Colonies, restored to his Office from this date inclusive.

By Order,

W. Caine,
*Colonial Secretary.*

Colonial Office,
Victoria, Hongkong, 16th June, 1848."

Mr. Hulme was thus reinstated with full powers, receiving, moreover, his full arrears of salary from the date of his suspension on the 30th November, 1847. The Secretary of State in reinstating Mr. Hulme, without even waiting to hear his personal vindication, acted in accordance with the character he had sustained as a statesman and as a member of social life. Lord Grey, of all Her Majesty's ministers, was probably the one who would have been the least inclined to overlook any gross impropriety in a Judge, and he evidently was satisfied that the Chief Justice had been the victim of a persecution which would entail disgrace upon those who had raised it. To colonists generally the result was gratifying; it was a proof that the petty tyranny of governors will not always be allowed to pass; it was a proof that the Secretary for the Colonies would redress wrongs; and, above all, it was a proof that the majesty of the law would not be degraded before the despotic will of a petty colonial satrap. Chief Justice Hulme had passed through a severe ordeal in a manner gratifying to himself, his family, and his

Valedictory.

* *Antè* Chap. VIII § I, p. 166.

Chap. X.

1848.

Retributive justice. Chief Justice Hulme. Comparison with Sir John Davis.

friends. There was a retributive justice in this case which should not be overlooked. Chief Justice Hulme had returned to the Colony vindicated from the aspersions that had been cast upon him, and Sir John Davis had gone Home branded as a libeller two years before the usual term of office, having been permitted to resign. An unexampled career of oppression *had* rendered miserable the existence of his subordinates; he had slandered his countrymen to Her Majesty's Government, and he had left these parts without having a single friend. Chief Justice Hulme had never courted popularity; on the contrary, until he had become the victim of persecution by Sir John Davis, he was apparently little known outside the circle in which he moved. He was known as a Judge who had given general satisfaction, but had never been recognized as an advocate of the people in the legislature. He now received a kind welcome and, as a man of experience, firmness, and integrity, he was entitled to it.

Governor Bonham leaves for northern consulates. Major-General Staveley acts.

On the 24th June, the Governor, accompanied by Mr. Thomas Wade, left by H.M.S. *Medea* for the northern consulates, the Government during his absence being administered by Major-General Staveley, C.B., the Lieutenant-Governor.

Sitting of the Admiralty Court.

A notice signed by Mr. Cay, the Registrar, 'by order of the Commissioners,' bearing date the 3rd June, and published on the 8th, intimated that a Court of Admiralty would be held on the 26th June, at 10 o'clock. At the hour appointed, Chief Justice Hulme arrived and retired to his robing room

The Commissioners do not attend.

where he ought to have been joined by the other Commissioners, but after waiting for an hour and a half, during which time the officers of the Court, the Attorney-General, and counsel for the prisoners duly convened "at or before 10 a.m.," had been dancing attendance, and the twenty-four Grand Jurors and forty-eight Petty Jurors kept pacing the outer room with impatient steps, the Chief Justice entered the Court and explained

Chief Justice discharges the Jury.

that, by the constitution of the Admiralty Court, it was necessary that two Commissioners besides the Governor or himself should be present, and as none of them had appeared up to that hour, he could not think of detaining the gentlemen of the Jury any longer and therefore released them, adjourning the Court to the

Comments.

5th July. His Excellency the Governor, it was known, had sailed on Saturday, the 24th, in the *Medea* upon a tour to the northern ports, but as to the other Commissioners the cause of their absence rightly formed the subject of comment. None of the others, it would appear, so much as sent an excuse, except the Colonial Secretary, who was confined to his house by sickness. The Chief Justice being the one to preside, it was not expected that the Lieutenant-Governor would have attended, and the Chief Magistrate's absence might perhaps have been excused

by his having to preside in his own Court; but as to the naval members of the Court, there could have been no excuse for their non-attendance. The inconvenience caused by the non-attendance of the Commissioners at this Sessions was severely commented upon. There were eight cases set down for trial, in one of them not less than fifteen witnesses from Canton being in attendance. The Jurors were naturally not a little annoyed at having been taken away from business to dance attendance at the Court to no purpose, with the prospect of having to attend again. But besides the inconvenience they were thus put to, justice was delayed and the Crown had incurred a serious expense, and, as was pointed out, all because those to whom the Crown had entrusted an important duty had not shown that regard for the public service which they were ever so ready to inculcate upon others. As regards the Jurors it was only at the last Sessions of the Vice-Admiralty Court (December, 1847) that a young man, a Mr. Buchanan, who, though really not liable to serve as a Juror,* had neglected to attend, though afterwards making the excuse that he had been sick, had been peremptorily fined twenty dollars, and having no money was committed to Gaol by Mr. Campbell and there kept for nearly two months "to abide the course of the law." That Mr. Bonham would allow the whole community to be thus made game of could not be imagined, and the Jurors, it was considered, would be wanting in their duty if they did not formally complain to the Governor on his return, and make a request that steps be taken to prevent the repetition of an occurrence which was both injurious and insulting to the public. On the 5th July, the date to which the Sessions had been adjourned, the Court opened. The Commissioners present on that occasion were the Chief Justice, Captain Morris of H.M.S. *Cambrian*, and Mr. Hillier, the Chief Magistrate. The strictures passed at the last sitting had therefore had some effect. Major-General Staveley, the Lieutenant-Governor, had also appeared at the opening of the Court, but finding there was a quorum and that he was not wanted, he afterwards retired, and the cases then proceeded.

The Jurors.

The case of Mr. Buchanan compared.

The sitting of the Admiralty Court after the adjournment.

Chief Justice Hulme having returned to the Colony and Mr. Sterling having resumed his duties, Mr. Campbell was now out of Government employment, and, to be charitable, it could not be said that it was due to this that the hostile criticisms passed on him during his short career in Hongkong were now reiterated on his departure. On the contrary, on Mr. Hulme's return he seems to have been cast into oblivion immediately, for even his departure is nowhere noticed, and great, indeed, seems to have

Mr. Campbell after the return of Chief Justice Hulme.

He is cast into oblivion.

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The description of him.

His conceit.

Unfitted for his position.

Sir John Davis interested in Mr. Campbell. The case against Mr. Hillier.

The case against Mr. Tarrant. Major Caine's reputation at stake.

General comments upon Mr. Campbell and his official career in Hongkong.

been the patience exercised in regard to him, notwithstanding the part he took in advising the Government adversely in connexion with the Chief Justice's suspension. He was described as an Anglo-Indian overbearing in manner and of no talent,* but, meeting with support from the authorities, his conceit reached such a pitch that it is reported he emptied the Court of suitors, the attorneys ceasing to enter cases for trial so long as he occupied the Bench. When Chief Justice Hulme was suspended, it was said to be a public calamity, and no doubt in many ways this proved to have been so. Many are the cases, civil and criminal, in which it is shown that Mr. Campbell was quite unfitted for the high position which had been thrust upon him. Without going minutely into the reasons of what was called "the iniquitous decision of an iniquitous tribunal," it will suffice to mention two cases which have before been dwelt upon in this work and which, it was said, Sir John Davis was personally interested in seeing his own nominee, dispose of. The first related to the suit against Mr. Hillier who, when acting Chief Magistrate, surrendered two Portuguese to the Macao Government without trial, in opposition to the English laws upon the subject, on receiving a written order from Sir John Davis, and though the consequences might not legally have affected the ex-Governor, still in honour he was bound to relieve the submissive Magistrate who had sacrificed the independence of the Bench at his command.† The second case was that of the Queen against Tarrant, upon which was staked the reputation of Major Caine, the Colonial Secretary, one of the three who voted for the suspension of Mr. Hulme and also one of the three who had given evidence against him.‡ This case had been first postponed owing to the excuse that a material witness was absent, the acting Attorney-General promising to bring it on to trial at the December sittings of the Court. But it was then abandoned§ "as Mr. Campbell had been prosecutor and therefore could not be Judge," though it was well known that he had sat as Judge in several cases where he had been employed as Counsel. In the case of the Portuguese, as their attorney, did not deem it advisable to bring on the action until another Judge had been appointed, Mr. Campbell was said to have "burked" it.‖ When acting as Attorney-General, Mr. Campbell's sentiments were well known to the Executive as to these cases, and he received the appointment of Chief Justice upon Mr. Hulme's suspension, and although Mr. Sterling,

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* "A Pariah practitioner."—*The Friend of China*, 1855, p. 62; "A half-caste barrister."—*The Friend of China*, 1858, p. 166; 1861, p. 720.

† See Chap. III § III., *antè* p. 105.

‡ See Chap. VIII § I., p. 159.

§ Chap. VIII § I., *antè* p. 170.

‖ Chap. IX., *antè* p. 193.

the Attorney-General, should have taken the Bench on his return to the Colony as he was expected shortly after Mr. Hulme's suspension, yet after his arrival he, a barrister of eighteen years' standing, had practically to make room for Mr. Campbell, a barrister called in 1844, and therefore hardly qualified for a seat on the Bench. The civil jurisdiction of the Court thus became virtually in abeyance, and it was remarked that when Sir John Davis appointed Mr. Campbell as acting Chief Justice he might have locked the door of the Court House and taken the key away with him. In 1847, the suits raised before the Court collectively amounted to $200,000; and in April, 1848, when the public were so earnest in their request that Mr. Campbell should resign, $700 only had been sued for.

Here then was the cause and effect, people lacking confidence in the Judge, there was for the time being no Court of Civil Law. His unauthorized interference as acting Chief Justice went to the extent, that, not satisfied with pronouncing sentence on the unfortunate people brought before his own tribunal, he took upon himself, as indeed he had done as acting Attorney-General, to issue peremptory mandates within the precincts of the Gaol. Amongst other things he ordered that the Chinese should not only have their tails cut off, but that their crown should also be shaved, so as effectually to prevent their attaching a false queue, and thus made felons and men confined for slight offences equally outcasts for life—a subject, it will be remembered, mooted by the Select Committee of the House of Commons upon the subject of our commercial relations with China.* This being in direct opposition to Her Majesty's Government, of course Mr. Bonham, on the facts being brought to his notice, ordered the practice to be discontinued forthwith, expressing no little astonishment on hearing that it had been done by orders of the acting Chief Justice.

Mr. Campbell's order for cutting off 'tails' and shaving off crowns of Chinese heads.

Governor Bonham ordered practice to be discontinued.

A number of cases are shown in which Mr. Campbell was occasionally taken to task for erroneous decisions. There being no local higher judicial power to appeal to, nothing was then left but to submit. In one case, *re* Nuncheong, heard on the 1st March, 1848, in which application was made to quash a summons, upon Nuncheong's attorney, Mr. Parker, appearing to oppose the application, the acting Chief Justice is reported to have said that it was of no use his opposing as he (Mr. Campbell) had made up his mind, and thereupon called out—"the rule is made absolute, Sir." On Mr. Parker applying for a copy of the Judge's notes containing the grounds of his dismissal of the summons, the application was refused, but subsequently a message was conveyed through Mr.

Mr. Campbell's erroneous decisions. *Re* Nuncheong.

* See *antè* Chap. VI., p. 131.

Chap. X. 1848.

Campbell's clerk "that the Judge took no notes of the case." These circumstances, it would appear, being laid before Chief Justice Hulme on the 3rd November, a rule was granted to re-open and re-hear the former rule dismissing the summons.

Nuncheong *v.* Consul McGregor.

Nor was Mr. Campbell's conduct astonishing, taking his conduct as acting Attorney-General especially, as a whole. The party immediately to be benefited by his action was Mr. McGregor, the Consul at Canton, but the result eventually was an action brought by Nuncheong against Mr. McGregor for negligence as Sheriff under a local Ordinance, in his capacity of Consul. Judgment in 1849 was allowed to go by default (Mr. McGregor having long before left the Colony), the Jury returning a verdict for $3,000 as damages against Mr. McGregor, who was now sympathized with "for hearkening to the wisdom and advice of Sir John Davis' model lawyer, Mr. Charles Molloy Campbell." The records do not show that the plaintiff ever recovered the fruits of his judgment. Here then was another proof of the melancholy condition of the Supreme Court during the few months it was presided over by a young, petulant barrister, the necessity for appointing whom, in the absence of Mr. Sterling at all events, was nevertheless evident, though the cause was to be deplored which had rendered it a necessity.

Sir John Davis' model lawyer. Melancholy condition of Supreme Court as presided over by Mr. Campbell.

Mr. Campbell as Attorney-General.

It is reported of Mr. Campbell that, when acting Attorney-General, he used to amuse the public by affirming that the Grand Jury, of Hongkong was comprised "in his own little person"; and from the Chief Magistrate's Bench where he was wont to perch himself, he would propound strange doctrines about contempts of court and his right and determination to exclude the public from the Police Court (which, by-the-bye, it was said, they virtually already were, on account of the mal-construction of the office, which made it impossible for any one except the Magistrate to hear what was going on). But apparently the most extraordinary escapades of Mr. Campbell, as acting Attorney-General, were during his nocturnal visits to the Police offices, undertaken, it was understood, "with the view of impressing upon the Peelers a notice of his own consequence and of his unlimited authority over them, far surpassing, according to his own account, that of Superintendent, Magistrate, or Governor himself." These scenes, added the report, would have afforded materials for an amusing farce, with which the Hongkong Theatre might very appropriately have opened.

His nocturnal visits to the Police Offices.

His departure from Hongkong.

As already stated, nothing can be found tracing Mr. Campbell's movements after the Chief Justice's return to the Colony, and therefore, as a fitting conclusion to a not altogether creditable

career, nothing better can be done than to quote a not very complimentary paragraph which appeared in a local newspaper expressive of the view taken of Mr. Campbell's refusal to make way for Mr. Sterling as acting Chief Justice, on the return of the latter from leave shortly before the re-assumption of duty by Chief Justice Hulme, and fittingly describing an anticipated and by no means regretted departure :— Chap. X. 1848.

"What claim had Mr. Campbell on the local Government that he was in spite of all retained as its Judge? He came here a briefless barrister from Calcutta after leading the life of an adventurer, and justly considered an acting appointment for eighteen months with £750 a year worth more than all his fabulous practice at Calcutta would ever have realized him. If incapacity was a necessary qualification for the Bench with a total absence of decorum, if these were the ingredients of the Judges who were so much and so justly admired in England, then the present Bench's incumbent might be retained until the return of Judge Hulme, when the servile protégé of Sir John Davis would be obliged to slink from the Colony, having, during his sojourn, earned the undisguised contempt of the community." 'The undisguised contempt of the community.'

On the 14th July, the Governor returned from his northern tour, having been nearly three weeks away. Return of Governor Bonham.

Among the official notifications of the 17th July, was an extract from a despatch of Earl Grey, Secretary of State for the Colonies, dated 4th May, 1848, in reply to the memorial before alluded to from the residents of the Colony dated the 19th February last,* on the subject of ground rents. Lord Grey stated that he could not admit that the memorialists had established any good ground for the reduction they sought. Land. Reply of Earl Grey to memorial of residents. Ground rents.

Mr. Bonham in a despatch to the Secretary of State upon the subject, dated the 26th August, 1848, suggested that he might be authorized to extend the term of tenure from 75 years to any other that Her Majesty's Government might approve of. He mentioned that at Singapore the term was 999 years, and that the intention there was to convey to the landholders all the advantages that attach to a permanent grant, without saddling them with the inconvenience sometimes attending the tenure of real property.† Governor Bonham's despatch. Extension of term of leases.

In reply to that despatch, Earl Grey stated (despatch of the 4th December, 1848) that, fully appreciating the difficulty in proposing any plan, short of the actual reduction of the rents, which would prove entirely satisfactory to the general body of landowners, he was inclined to concur in the opinion that to extend the term of the existing leases would be the Earl Grey's reply.

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* *Antè* Chap. VIII § II., p. 178.

† See also *antè* Chap. VIII., p. 144.

Chap. X. 1848.

most expedient course to adopt. Earl Grey then authorized the Governor to take the necessary measures for granting these leases in virtual perpetuity for the term of 999 years, and, as will be seen later on, steps were taken in that direction on the 3rd March, 1849, by Government Notification of that date.*

**Return of Mr. Inglis, the Registrar-General, from leave.**

On the 20th July, Mr. Inglis, the Registrar-General, returned from leave and resumed the duties of his office. On the 21st July, just a week after the Governor's return from his trip, a proclamation was published announcing that the three victims of the infamous Too Apo, formerly a pirate, next an informer, then a trafficker in human lives, and now a convict, and who has been so often mentioned before, had received a free pardon. It will be recollected that Too Apo had been convicted at the April Criminal Sessions of this year of extorting money under a threat to charge others with piracy,† and that three of the men, sentenced to transportation upon his unsupported evidence in January last, were about to embark by the *Mor*, but were kept back by the Governor that he might inquire into their case.‡ There could not have been a difference of opinion as to the use the Governor had made of the high prerogative with which he was entrusted. It had been the peculiar misfortune of these men that they had been tried and condemned before Mr. Bonham's arrival, and it was suggested that, with so indifferent a judicial staff to consult, Mr. Bonham might hardly have been expected to exercise his prerogative of pardon against the advice of the then acting Chief Justice and the Chief Magistrate, however much he may have doubted its soundness; but the fact of these men having been retained in the Colony and Mr. Bonham himself inquiring into their case, afforded a gratifying proof of Mr. Bonham's desire to see justice done to the meanest of those placed under his Government. On the 17th August, the Governor granted a free pardon to another of the unfortunates convicted on the now memorable 24th January of the present year.

**Victims of Too Apo pardoned.**

**Governor Bonham eulogized.**

**Another victim of Too Apo pardoned.**

**Piracy Case against Captain Cole and crew of the schooner *Spec*.**

On the 29th July, the schooner *Spec* arrived in Hongkong under charge of Lieutenant Graham and a prize crew belonging to H. M. brig *Childers*. Captain Cole of the *Spec* and her crew were handed over to the authorities on a charge of piracy. The case attracted much attention at the time, but at a Sessions of the Vice-Admiralty Court on the 3rd October, the Grand Jury found no true bill against the prisoners, who were discharged. The case, it would appear, rested mainly upon an

**No true bill.**

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* See Chap. XI., *infrà*.

† *Antè* p. 191.

‡ *Antè* Chap. VIII § II., p. 174.

alleged confession of Captain Cole and the statement of a Chinese witness who had disappeared, and for whose apprehension Government had offered a reward of $200.

Re-appointment of Mr. Mercer as a member of the Legislative Council.

Mr. Mercer, the Treasurer, who had resigned his temporary seat in the Legislative Council on the return to the Colony of Chief Justice Hulme, was now again appointed a member of the said Council and was re-sworn accordingly.

The solicitors and attorneys petition the Chief Justice on the subject of the Court fees.

On the 7th August, the solicitors and attorneys of the Supreme Court petitioned the Chief Justice on the subject of the Court Fees, forgetting apparently that the reform asked for did not so much rest with the Chief Justice as with the Executive. The following was the petition :—

Victoria, 7th August, 1848.

To the Honourable

JOHN WALTER HULME, Esquire,
*Chief Justice of the Supreme Court of Hongkong.*

The humble petition of the Solicitors and Attorneys of the Supreme Court,

Humbly sheweth,—

That we most respectfully call your attention to a circumstance which has long been felt as a bar to suitors in the Supreme Court obtaining their just rights by the aid of law, especially to the Chinese and Natives of India, many of whom have large claims, which they are at present prevented from bringing into Court by reason of the percentage fee payable on affidavits to hold to bail, on declaration, and on the judgment pronounced, which is two per centum for the first one hundred dollars, and one (per cent.) for every subsequent hundred, of the amount claimed or sought to be recovered ; and which in many cases acts as a complete barrier to parties obtaining redress. We may mention in proof of this that there are several parties who have equitable rights of action upon individuals residing in China, and within the jurisdiction of the Supreme Court of Hongkong, one of which is for the recovery of about $100,000. In their case the bill has been already drawn by counsel nearly two years ago, but as the party is not, through unavoidable reverse of circumstances, able to raise a sum of one thousand and one dollars being the Court fee payable on the filing of this bill, he is completely shut out of the Court ; while he cannot sue as a pauper, being worth more than twenty-five dollars, but not able to pay so large a sum as one thousand dollars.

A few months ago, a Chinese merchant wanted to hold an English merchant (who was going to England by the mail in rather a sudden manner) to bail, for his debt for goods sold, amounting to seventy thousand dollars. To do this he would have had to pay a fee of seven hundred and one dollars on the affidavit to hold to bail, which the party looked upon as in the nature of Mandarin squeeze, and would not pay ; and, of course, he was deprived of his remedy and in many similar instances have parties been prevented from coming into Court. If Your Lordship would take the trouble of looking through the Table of Court Fees, you would observe that in suits commenced by way of arrest, this fee of one per centum is paid three several times during a suit, should it go to trial : if the suit is commenced by the ordinary writ of summons,

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the fee is paid twice; while on judgment by default there is no percentage fee on signing the final judgment. In small amounts these fees are not considered so great a hardship; but when the amount sought to be recovered is large, this fee frequently operates almost as a denial of justice.

At present there are many parties who have very large claims on a firm at Canton, which they do not like to bring into Court on account of this fee. In one case, writs of summons have issued to the amount of twenty thousand dollars on bills of exchange, and on which the party declined risking the fee of two hundred dollars for filing the declaration, as he says he may not get anything by it. Perhaps it might not be out of place to mention that we have been informed that at the Consular Courts payment of the same fees as are payable in the Supreme Court are not in all cases paid.

We would also respectfully add, that those fees above alluded to are not known amongst the fees of Court in England; and we are not aware of such a fee being payable in any other of Her Majesty's Colonies,—the fee upon filing declarations and affidavits to hold to bail in England, and in the Colonies of Australia and Van Diemen's Land being only one shilling, whatever may be the amount recovered.

We would therefore humbly suggest a more equitable mode for the collection of a fee greater in amount, namely, a poundage fee similar to the Sheriff's in all cases on writs of ca. re. and executions, whether on judgment by default or otherwise, such fee to be levied by the Sheriff on the amount recovered.

It is humbly conceived that by abrogating the amount payable in the initiatory part of proceedings, even a greater revenue would be derived to the Court than the amount already realized, people generally viewing actions at law as a species of speculation, and in which, if they succeed, they would not object paying what might be reasonably demanded for the benefit derived.

These few observations are addressed to Your Lordship actually owing to the frequent complaints of suitors on this subject; and to which we most humbly and respectfully beg to call your attention.

Your petitioners therefore humbly pray Your Lordship's interference in the matter; and hope that what is now felt to be a grievance, Your Lordship will be able to have remedied; and your petitioners will ever pray, etc.

Fees prescribed by *Regula Generalis.*

The fees complained about had been prescribed by the *Regula Generalis* of the 1st March, 1847, before alluded to.*

Inspector Smithers and other Police drowned.

On the 31st August, Mr. Thomas Smithers, Inspector of Police, was caught in a typhoon while in charge of some Police who had been ordered out in the Police gunboat for a change by the Medical Officer, and, together with his son and a number of European and native Police, was drowned. By Mr. Smithers' death, the public lost a most efficient officer whose zeal and activity had been only equalled by his experience acquired during twenty years' service in the London Police, and who had been selected from that body, as the most likely man to assist Mr. May in performing Police duties in Hongkong, in a satisfactory manner.† On this sad occasion the Police lost no less than eight European and nine other Policemen, Manilamen and Chinese.

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* *Antè* Chap. V. § II., p. 130.

† See Chap. III. § II., pp. 75. 76.

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1848.

Mr. Holdforth, Assistant Magistrate and Sheriff, again came under public notice at this period.* In his capacity of Sheriff, it was publicly alleged that "for pecuniary consideration" he allowed debtors to go out when and wherever they liked, in the custody of an officer, on the ground that the prisoners being committed to his charge he could of his own accord grant them any indulgence he pleased. Another charge against him was that he frequently employed convicts under charge of native policemen, in clearing, levelling, and carrying earth on his own private grounds. For some reason not very apparent at this distance of time, the authorities appear to have turned a deaf ear to the public remonstrances as to Mr. Holdforth's doings. The records of 1850, however, as will be seen later on, show him up in his proper colours.

Further charges against Mr. Holdforth, the Sheriff.

Mr. Hulme, the Chief Justice, was providentially saved from a violent death on Tuesday, the 5th September. In crossing a bridge on horseback between Victoria and Stanley, the bridge broke down, and the Judge had a fall of about thirty feet. Fortunately the fall was broken by a scaffolding put up for repairs, and though the respected gentleman, says the report, was severely bruised, it was gratifying to know that his injuries were not such "as to endanger a life so valued by his countrymen in China,"—which in itself shows how popular the Chief Justice was.

Chief Justice Hulme's fall from horseback.

His popularity.

A Sessions of the Vice-Admiralty Court was held on Tuesday, the 3rd October, when the case of Captain Cole of the *Spec*, previously referred to,† was thrown out.

Session of the Vice-Admiralty Court. Case against Captain Cole thrown out.

On the night of the 15th October, 1848, as a party of Englishmen in a boat were passing in the harbour, stones were thrown from one or two junks, and the water police were sent to obtain redress. It seems that it had been a practice among thieves in the waters of Hongkong to personate police, and in that guise to board trading vessels. It was blowing hard; the police neared the junks; many yards from the vessels, in the dark, amid much confusion of wind and voices, a summons was shouted, in indifferent Chinese, to the junkmen to admit the police on board. The Chinese showed fight, and the police boats made off to obtain reinforcements from a war-ship. A party was then sent under a naval officer, the junks boarded by force, when two Chinese were killed, and others taken into custody. On the way to shore, some of the sailors "executed Lynch law" upon the prisoners by cutting off their queues. At an inquest held on the bodies, the Chinese pri-

Police scrimmage with Chinese in the harbour.

Police seek naval assistance.

Chinese killed. 'Tails' cut off.

* See Chap. VII., p. 150, and Chap. XII., *infrà*.

† *Antè* p. 206.

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soners declared that they mistook the boats which approached them for those of thieves; and a proclamation by the Governor was produced directed to masters of trading junks in which it was declared that "no person except the Harbour Master can board a junk or vessel without the consent of the master, unless he is armed with a warrant and accompanied by a constable."

Verdict at inquest.

The Jury returned a special verdict with a rider to the effect that the two Chinese died from gun-shot wounds inflicted by certain seamen and marines unknown acting under orders, but that the resistance offered "appeared to have been justified" by the necessity of trading junks protecting themselves from being boarded by strangers and pretended policemen, which was tantamount to a verdict of 'manslaughter' against the assailants of the junk. The action of the authorities in this case was afterwards strongly commented upon by both Indian and Home papers, and the suggestion thrown out that "the prisoners arrested by the boarding party, and the families of the men killed, had a just claim to compensation—a claim no less cognizable by policy than justice."

Home and Indian view of the case.

October Criminal Sessions.

On the 16th October, the usual Criminal Sessions were held. There were fifteen cases set down for trial, but none call for special notice at this distance of time.

Convict soldiers transported to Cape of Good Hope.

Under instructions directed to the Government, dated the 28th September, 1848, all British soldiers sentenced by Court-martial to transportation, were ordered to be removed to the Cape of Good Hope there to undergo their sentences.

Case of the Portuguese against Mr. Hillier. New trial granted by Chief Justice.

On the motion of Mr. Gaskell, attorney for the plaintiffs in the case of D'Assis and Pacheco against Hillier, non-suited on the 26th April last,* a new trial was granted by Chief Justice Hulme on Friday, the 24th November. The parties evidently seemed determined to go on with the case, and from the facts reported at the last hearing, it would appear as if the plaintiffs had some reason for suspecting "how far Mr. Campbell's temporary promotion had been consequent upon an understanding that this and one or two other cases were to be disposed of according to the wish of Sir John Davis." Be that as it may, however, whatever the facts, the parties proved unsuccessful in the end upon a point of practice, though Chief Justice Hulme evidently seemed disposed to afford them every facility for proceeding with their case. The matter having caused so much discussion at the time and undoubtedly given the authorities some trouble, it may not be out of place to put on record the last phase in connexion with it. On the date fixed, the 13th December, the case came on for trial before the Chief Justice and a Special Jury. The damages, as

Chief Justice Hulme disposed to grant plaintiffs every facility. Summary of the Case.

* *Antè* Chap. IX., p. 183.

stated before, were laid at $25,000. After the pleadings had been opened by the plaintiffs' advocate, and as he was proceeding with the case, a question as to whether *in point of law* the action was tenable, was raised on the grounds that the statute had not been complied with, so far as regarded the plaintiffs not having given notice to the defendant, and commenced their action within six months after the trespass and false imprisonment complained of by the plaintiffs, had been committed, the Act of Parliament requiring that in cases of actions against Justices of the Peace and other officers, proceedings should be commenced within six months after the cause of action arose. The plaintiffs' advocate contended that, although the plaintiffs had been released from imprisonment at Macao on the 15th September, 1846, in which position they had been placed in consequence of Mr. Hillier's warrant of arrest, still they were bound over in heavy recognizances not to quit Macao, until the sentence of the Supreme Court at Goa regarding their case was made known, and that therefore they were under duress and unable to leave that place to seek legal advice or redress at Hongkong, and that they, labouring under such a disability, were entitled to prosecute their action, notice having been given and the action commenced within six months after their bonds or recognizances had been cancelled and such disability removed. Notice of action had not been served on the defendant until September, 1847.

Chief Justice's decision.

His Lordship, in delivering judgment, said that on this point he was of opinion that the plaintiffs might have complied with the statute by sending for their legal adviser to Macao, and instructing him to proceed with the case earlier than they had done; or that they might have appointed some person to communicate with him on the subject, and as this had not been done, His Lordship ruled that in point of law the case could not be carried further, and accordingly instructed the Jury to find a verdict for the defendant, which they did.

Verdict for the defendant.

The plaintiffs' advocate then stated that the plaintiffs were men of high standing and respectability, and that the action had been brought not as a money-seeking one, but with a view to the vindication of their reputation from the charge on which they had been arrested.

No imputation on the characters of the plaintiffs.

The Chief Justice observed that, in his opinion, there was not the least ground for any imputation on the characters of the plaintiffs, especially as they had been acquitted from the charge by the sentence of the Supreme Court at Goa. Thus ended a case that had been pretty freely discussed in Hongkong during the last two years.

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1848.

Mr. McSwyney and his Chinese wife Aho.

At the last Criminal Sessions, a Chinese woman named Aho, *alias* Mrs. McSwyney, charged with larceny, was discharged by proclamation, the Attorney-General declining to proceed with the case. It would appear that this woman was in reality the wife of Mr. McSwyney, alternately Deputy Registrar of the Supreme Court, Solicitor,* and Coroner.† It will be remembered that his conspicuous incapacity had caused the Government to 'relieve' him of the Coronership in November, 1846,‡ and now his 'little knowledge of law' had further proved dangerous to him, and caused him to be duped into a strange matrimonial entanglement, a farce, it was said, to wind up what, in theatrical language, was styled "the heavy business" and which was further illustrative of the "marriage of lawyers" in China.

How he was duped into marrying her.

Mr. McSwyney, it appeared, had formed an acquaintance with a woman named Aho, representing herself to be the widow of a Fokien merchant, who at his death bequeathed her some household property in Canton, which, if McSwyney married her, she would make over to him. To this he consented, and after signing the customary Chinese marriage documents, accompanied his wife to Canton, where she introduced him to a man calling himself her brother, and who stated he was an extensive tea-dealer, and further that he would be happy to give his English brother-in-law the entire management of the shipping of his teas. A large house was also pointed out as the property of the woman. Mr. McSwyney was delighted and returned to Hongkong, where, it is said, in the exuberance of his spirits, he presented his wife with a great many presents consisting of dresses, trinkets, etc. As the period approached when the rents were said to be coming due, Mr. McSwyney left for Canton; but, on presenting himself at the Hong with the receipts for the rent, was not a little astonished to learn that he had been completely duped, and that nothing was known about the woman Aho, or her pretended brother, the tea merchant.

He ill-treats his wife and turns her out of doors. He charges her with larceny.

Mr. McSwyney thereupon returned to Hongkong quite crest-fallen, and avenged himself by mal-treating his wife and turning her out of doors. Some days after he appeared at the Police Station and lodged a charge against her and his servants, for stealing several articles from his house. The woman was apprehended and taken before Mr. Hillier, the Chief Magistrate, and, on being questioned, acknowledged that several of the articles were in her possession, but that they consisted of presents which her husband (McSwyney) had given her previous to his last visit to Canton. There were some English shirt studs amongst them which the Magistrate remarked could never

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* See *antè* Chap. III § II., p. 82.

have formed part of a Chinese woman's costume, but Aho explained that in the evenings she used to dress as a European and walk out with her husband. The Magistrate, evidently doubtful of his own law, directed that she should find bail for her appearance "to answer any charge that might be brought against her by the Attorney-General." Mrs. McSwyney, not being able to find security, was therefore detained in prison until the Sessions before last, when she was discharged from custody by proclamation. Mr. Sterling, the Attorney-General, considered there was no case to go to trial, holding that Aho was really the wife of McSwyney, having been married in the usual Chinese form, and never divorced.

Mr. Hillier doubtful of his law, leaves matter to the Attorney-General. Mr. Sterling's views. Mrs. McSwyney is discharged by proclamation.

Early in December, Mr. N. D'E. Parker, the Coroner, who had succeeded Mr. McSwyney, resigned office, and the Government thereupon appointed Messrs. Hillier and Holdforth to act as "Joint-Coroners—" a peculiar appointment which raised the question whether they were to act "jointly or severally." On the morning of the 28th December, a few minutes after 8 o'clock, the convict Mo Yeen, found guilty at the Criminal Sessions held on the 15th December, of a murder committed in November, 1845, when his accomplice was found guilty and hanged,* was executed at West Point. The prisoner had escaped to Canton and only returned to Hongkong in October last. He was recognized by Mr. Caldwell, the Assistant Superintendent of Police, who saw him in a barber's shop as he was passing, and took him into custody. He walked to the scaffold with the utmost coolness and appeared perfectly indifferent to the awful death awaiting him.

Resignation of Mr. N. D'E. Parker as Coroner. Messrs. Hillier and Holdforth 'Joint-Coroners.' Execution of Mo Yeen for murder committed in November, 1845. How his capture was effected. His indifference on the scaffold.

Only two Ordinances were passed during the year 1848. As seen, therefore, Mr. Bonham preferred abiding his time by looking round and studying the requirements of the place rather than plunge himself into a system of hasty legislation so often detrimental to the best interests of a Colony, with no alternative afterwards but to repeal or revoke. The arrival of Major-General Staveley, followed by that of Mr. Bonham as Governor, and the departure of Major-General D'Aguilar, Governor Davis, Mr. Consul McGregor, and the reinstatement of Chief Justice Hulme, all prominent men, are features intimately associated with the Colony and its judicial affairs during the year under consideration. Nor will the incidents connected with Mr. Campbell's short and extraordinary career as an acting high official, followed by his hasty departure, be found less worthy of record; without

Judicial features of 1848.

Chap. X. 1848. omitting also the conviction of the notorious pirate and infamous Too Apo, in whom the authorities and the public seemed apparently to have placed implicit confidence, till found out,—with what result of suffering and injustice this world will never know.

# CHAPTER XI.

## 1849.

Public meetings regarding the position and prospects of the Colony.—Lord Grey's despatch referred to.—Popular representation.—The Supreme Court.—Expenses under the Treaty unfair to the Colony.—Mr. N. D'E. Parker and the complaint as to Attorneys' charges.—Mr. Gaskell and the fees of Court.—No love for litigation.—Cost of law proceedings.—Meeting adjourns.—Hongkong only Crown Colony wherein principle of representation not recognized.—System of representation asked for.—The Supreme Court and legal expenses.—Heavy bills of costs against Chinese.—No wrong implied to the Supreme Court.—The first six Attorneys of the Court in Hongkong.—The two Attorneys still in practice.—Chinese less partial to litigation.—Fees in the Supreme Court considered enormous.—Justice in England —In Hongkong.—Attorneys' bills subject to taxation.—Abolition of Supreme Court not aimed at. Mr. Campbell "a puppet whose malice checked by imbecility."—Interference of Sir John Davis with the administration of justice.—Governor Bonham and Lay Judges.—The tone of public opinion at the time of the Chief Justice's suspension.—Mr. Campbell the "vicious tool."—Permanent maintenance of the Supreme Court desired.—Escape of Chinese transported convicts at Penang.—Judicial revenue and expenditure.—How Mr. Campbell increased the revenue.—The adjourned public meeting.—A short Code for the more convenient administration of justice.—Extension of the Summary Jurisdiction of the Supreme Court.—Compliment to Chief Justice Hulme.—Public representation in the Legislative Council.—Forms and Fees in the Supreme Court.—Mr. Parker upon the want of interpreters in the Supreme Court.—Disgraceful state of affairs.—Memorial settled.—Comments.—The memorial sent Home.—Publication of Draft Ordinances.—An Ordinance to repeal Ordinance No. 6 of 1847.—A departure.—The liberality of Mr. Bonham.—Drafts of Ordinances regularly published.—Bulk of Criminal Cases to be tried in Police Court.—Considerable alarm and disapproval.—Ordinance No. 6 of 1847.—Nefarious attempts to interfere with the administration of justice.—No insinuation against Mr. Hillier, though no confidence in him.—Guided by the Executive.—Public excluded from the Police Court.—Discreditable opinion held of Mr. Hillier.—Reforms asked for in the Police Court.—Objectionable portions of the Bill.—Power of appeal to Supreme Court withheld.—Ordinance No. 6 of 1847, s. 7.—Sir John Davis and Consular decisions.—The intent of the proposed measure.—Chief Justice Hulme had never complained.—Confidence of community in him.—Drudgery of a small debt Court imposed on the Chief Justice.—The Chief Justice and the proposed Ordinance.—Points brought out in the proposed Ordinance.—Tenders for passages for convicts to the Cape of Good Hope and Penang.—February Criminal Sessions.—Dr. Bowring appointed British Consul at Canton in the place of Mr. McGregor.—His previous career.—Murder of Captain Da Costa, R.E., and of Lieutenant Dwyer, Ceylon Rifle Regiment, at Wong-ma-kok.—They had had a champagne tiffin.—The Chinese evidence as to the murder.—Taking liberties.—The Chinese outlaw and pirate Chui Apo.—The officers hotly pressed and overpowered.—Their bodies hurled into the sea.—Action of the authorities.—The Police and military scour the island.—H.M.S. *Fury*.—Body of Captain Da Costa found.—Arrests.—The sad tale.—The inquest.—Verdict of the Jury. Wilful murder against Chui Apo and others.—Suspects discharged.—Government rewards.—Body of Lieutenant Dwyer never recovered.—Funeral of Captain Da Costa.—Appointments of Justices of the Peace.—Probable reason.—Petty Sessions Ordinance No. 1 of 1849 passed by the Legislature.—The Ordinance modified to meet public wishes.—Calculated to be useful.—Presence of Justices of the Peace provided for.—Police Court remained unaltered.—Mr. Hillier discharging duties devolving upon the Chief Justice and a Jury.—More Justices of the Peace.—No dearth of Justices.—Ordinance No. 6 of 1862.—Sittings at Nisi Prius.—Auction duty abolished and licences granted.—Land. Extension of terms of Crown Leases.—First sitting of Court of Petty Sessions.—Meeting of China Branch of Royal Asiatic Society in the Supreme Court.—Ground floor of Supreme Court also used as a church.—Room used as vestry set apart for the Society.—Draft of Ordinance to amend Ordinance No. 9 of 1845, relating to the Summary Jurisdiction of the Supreme Court, published.—Chief objection to the extension of Summary Jurisdiction.—Mr. Campbell still on the public mind.—Mr. Hawes, M.P., on the average disallowance of Colonial Acts.—Elected legislatures and elements of representation.—Materials for popular representation.—Different condition of affairs in Hongkong.—The objections to the extension of the Summary Jurisdiction of the Court.—Sir John Davis and Mr. Campbell in view still.—Section 5 of the Draft Ordinance.

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Public meetings regarding the position and prospects of the Colony.

ON the 4th January several of the mercantile firms requested the Sheriff to call a meeting of the residents "to afford them the opportunity of stating their views as to the position and prospects of the Colony and of adopting measures for again bringing the subject to the notice of Her Majesty's Government," and in accordance with the requisition a public meeting was held on Wednesday, 10th January, at the Oriental Bank. The despatch from Lord Grey mentioned in July last,* in answer to the memorial from the residents which had been sent in February, was read. Drafts of a letter to the Governor and of a memorial to the House of Commons were then submitted. Paragraph 7 of the latter related, *inter alia*,, to popular representation in the Legislative Council and read as follows:—

Lord Grey's despatch referred to.

Popular representation.

7. "Your petitioners urgently pray the attention of Your Honourable House to the recommendations of the Select Committee in their Report.....

That a share in the administration of the ordinary and local affairs of the island should be given by some system of Municipal Government to the British Residents.

* *Antè* p. 205.

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That some short code should be drawn up for the more convenient administration of justice."

The next paragraph referred absolutely to the Supreme Court and was in condemnation of the fees charged, of excessive attorney's costs, and of the necessity for the employment of attorneys. It stood as follows :—

8. "Your petitioners cannot too strongly express their conviction of the bad moral effect produced in the minds of the Chinese by the present system adopted in the Supreme Court, whereby the ends of justice are too often frustrated, and parties seeking redress are obliged to call in the assistance, in civil suits, of attorneys, whose charges are excessive, but whose services are rendered necessary by forms which none but an attorney understands; whereas these, in the opinion of your petitioners, should be so simple as to admit of any one pleading his own cause."

**Expenses under the Treaty unfair to the Colony.**

A previous paragraph, the fifth, touched upon certain expenses under the Treaty, which it was considered the Colony should not be exclusively charged with, such as related to the Superintendent of Trade, the Supreme Court, "as well as the Consular Cases in which the Attorney-General was consulted at the charge of the Colony."

**Mr. N. D'E. Parker and the complaint as to Attorneys' charges.**

Mr. N. D'E. Parker, solicitor, begged to call the attention of the meeting to an expression in the eighth paragraph, conveying a very sweeping and grievous charge. If it were forwarded in its present state, it would oblige him and his brother-attorneys to send a counter-petition, wherein he would state the number of cases in which the merchants of China had been concerned. Of the mercantile houses represented at the meeting, two or three only had brought actions in the Supreme Court. The immense sums paid into the Treasury as fees of Court, which appeared in the returns of revenue, showed how little the attorneys got out of these charges. More than £2,000 a year was derived from this source.

**Mr. Gaskell and the fees of Court.**

Mr. Gaskell, another solicitor present, said the Court fees were justly complained of, but the attorneys had nothing to do with that.

**No love for litigation.**

Several of the others seemed disposed to defend the clause as it stood, but one member, professing no particular love for litigation or attorney's charges, could not help thinking that the clause might be modified with advantage, and he trusted that the Committee whose appointment he was about to move would think so too. The meeting had been assured there was no intention to impute blame to the head of the law here, but as the clause stood, this was not very clear. With regard to the

**Cost of law proceedings.**

cost of law proceedings, it would be well for the meeting to

tures," in the revenue returns of Hongkong, appeared a sum exceeding £4,000, being double the Police rate, which, strictly speaking, was the only tax upon the colonists. The meeting then adjourned till Friday, the 19th January, at noon, for the purpose of giving sufficient time for consideration of the matters contained in the draft letter and petition.

Meeting adjourns.

The proceedings at this meeting naturally excited much public attention. There were points in the memorial which undoubtedly could be adopted and would be productive of much benefit; such as, a share in the legislation to be extended to the residents, a simplified code of legislation, and a reduction in the fees and charges of the Supreme Court.

This was the only Crown Colony at the time in which the principle of representation had not been recognized. Without a constituency or with one where the great majority cannot appreciate the privilege, an elective legislature was entirely out of the question; but in other possessions to which the franchise had not yet been extended, the principle of representation was acknowledged by the nomination of some of the most influential and intelligent members of the community to seats in the Council. Such a system of representation could be asked for here, and so far from impeding the measures of Government, a few members of Council acting independently would facilitate the labour and strengthen the hands of a liberal Executive.

Hongkong only Crown Colony wherein principle of representation not recognized.

System of representation asked for.

As to matters connected with the Supreme Court, it was necessary to guard against misconstruction. The draft of the memorial had, to all appearances, been prepared hastily and was expressed in such a manner as to lead to the belief that the Supreme Court was complained of and that it was wished to be got rid of. A greater mistake could not have existed. The expenses incurred in recovering a small sum were sometimes very great, but this arose partly from the rate of fees fixed by the Legislature. The authority, nay much more, the existence, of the Court was what no sane man could wish to see interfered with. The heavy bills of costs which had been run up against Chinese suitors, who, ignorant of the laws and acting upon bad advice, had rushed into litigation when they had no chance of success, had not been without its ill-effects; but to others the language used would imply that there was something wrong in the Court itself,—an opinion, it was understood, foreign to the gentlemen themselves who had drawn up the memorial. Nor did it exist among the European inhabitants, who knew that justice was not governed by the opinion of an attorney, nor its length and breadth measured by a bill of costs. Of the six attorneys who had practised their profession in Hongkong

The Supreme Court and legal expenses.

Heavy bills of costs against Chinese.

No wrong implied to the Supreme Court.

The first six Attorneys of the Court in Hongkong.

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during the last seven years, one had been forbidden to practise any further; two were said to have been "notoriously unfit for any pursuit requiring judgment and common sense;" and another had been obliged to leave in bad health. Without charging anything against the two gentlemen who were still in practice, there had been instances in which ignorant Chinamen had been urged into Court for the sake of a bill of costs, and this conviction had gained ground, and the system produced a bad moral effect upon the minds of the Chinese. Certainly, in a great degree the evil had ceased, but the Chinese, profiting by experience, were getting less partial to litigation. An outline of the forms of procedure in the Courts, and a brief abstract of the laws themselves in the Chinese language, was perhaps a desideratum; but this was a subject for the consideration of the local Government, and until such a compilation was available, the Chinese must depend upon the attorneys, and, after all, an honest lawyer was the best adviser, however much the people railed against them.

*The two Attorneys still in practice.*

*Chinese less partial to litigation.*

*Fees in the Supreme Court considered enormous. Justice in England.*

The fees in the Supreme Court were also considered enormous. At a time when every available source was pressed into the revenue, justice, of course, had not escaped. In England, cheap and speedy justice had always engaged the attention of the best and wisest of our statesmen, and forms of procedure had been greatly simplified, expenses reduced, and time especially saved. Hongkong would eventually receive the full benefit of these changes, but it could not be expected, surely, that local claims were individually of sufficient importance to engage the attention of Parliament for a special Act to be passed altering the established forms of procedure here! At all events attorneys' bills were liable to taxation, and were not a very proper nor yet dignified subject for a Parliamentary appeal. It was suggested that the abolition of the Supreme Court in a measure had been aimed at. The Home Government would never have listened to such a proposition, even if propounded. Lay Judges and "every man his own lawyer" were very pleasant theories, but, in practice, they would be disastrous. In reference to Mr. Campbell, at one time the occupant of the Chief Justiceship of the Colony, though it might not be possible again to see the administration of justice committed to such "a puppet, whose malice was only checked by his imbecility," still the state in which the people here found themselves was too monstrous and of too recent a date to be easily forgotten, or to make anyone willing to dispense with a Jury in any serious trial. Besides, the manner in which matters had proceeded in the Chief Magistrate's Court, where Sir John Davis openly and unblushingly interfered with the administration of the law, and the manner in which

*In Hongkong.*

*Attorneys' bills subject to taxation. Abolition of Supreme Court not aimed at.*

*Mr. Campbell "a puppet whose malice checked by imbecility."*

*Interference of Sir John Davis with the administration of justice.*

that Court had submitted to his nefarious interference, was a pretty good specimen of what might be expected under other circumstances. If any such opinion, then, had ever been engendered as to the abolition or partial abolition of the Supreme Court,—an idea probably entertained by Mr. Bonham, the Governor, who, as Governor of the Straits Settlements and President of the then Court of Judicature under the Charter there, had had some experience of the working of that Court with a Recorder at Penang going occasionally on circuit to Singapore and Malacca, where in his absence sat, as Lay Judges, the Resident Councillors of each Settlement, and of the working of which the writer *knows* something,—the people of Hongkong should call to remembrance the state of this Colony before the Supreme Court was established and inquire whether it was preferable to the existing protection of just and equitable laws? Was there such confidence in the Colonial Secretary, the Chief Magistrate, and the then members of the Government as could induce one to prefer their dispensation of law to that of Chief Justice Hulme? It was necessary further to remember the tone of public feeling when the Chief Justice was suspended, as was rightly said, "by an iniquitous tribunal, and a puppet of Government (Mr. Campbell) stuck on the Bench, to whom unnatural incapacity was not the greatest objection." The feeling of indignation with which it was learnt that this "vicious tool" was to be continued on the Bench after the Attorney-General returned to the Colony; the gratification experienced when Chief Justice Hulme arrived to "displace the puppet from a position which he held for months to his own discredit and the discredit of those who helped him to his perch," were all events, in connexion with the permanent maintenance of the Supreme Court, never to be effaced from one's mind. The public, therefore, were invited calmly and patiently to consider the documents before them before embodying any opinion which the majority of the European inhabitants did not entertain.

The tone of public opinion at the time of the Chief Justice's suspension.

Mr. Campbell the "vicious tool."

Permanent maintenance of the Supreme Court desired.

Escape of Chinese transported convicts at Penang.

On the evening of the 13th January, eleven of the Chinese convicts, lately transported to Penang from this Colony, succeeded in ridding themselves of their shackles while bathing at a well in the neighbourhood of the Government brick-kilns where they had been employed during the day. One of them attacked the native warder in charge, but the latter proving the more powerful of the two, kept his hold till assistance arrived. Of the ten who escaped into the jungle, seven were subsequently re-captured, but three were, when the news reached Hongkong, still at liberty, as was likewise another Hongkong convict who had escaped about three weeks before.

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**Judicial revenue and expenditure.**

The official statement of the revenue and expenditure of the Colony for 1848 was published on the 18th January. On fees, fines, and forfeitures of Courts there was a decrease of no less than £1,124. 9*s*. $4\frac{3}{4}d$. since 1847, in which year, however, the amount was at its maximum on account of the excessive fines and exactions in the Police Court, which, with its Chief Magistrate and Assistant, acting under superior orders, "used to take its cue" during 1847 from Mr. Campbell, the young man who then acted as Attorney-General and who made it a boast to the Governor "how he augmented the revenue by that means." By way of contrast, however, as pointed out before, it was worthy of note also that during the *six* months he subsequently presided on the Bench of the Supreme Court, so little confidence was reposed in him * that the whole amount of fees was less than during *one* month after he was displaced. From February to July, 1848, the fees in the Supreme Court were £169. 11*s*. 6*d*., while in August alone, after Chief Justice Hulme had resumed duty, they were £174. 13*s*. 4*d*.

**How Mr. Campbell increased the revenue.**

**The adjourned public meeting.**

The adjourned public meeting previously referred to was held according to date, on Friday, the 19th January. The petition to the Governor and memorial to the House of Commons were again brought up for consideration, and, after discussion and a few amendments, they were both formally adopted. In paragraph 7, the petitioners urgently prayed the attention of the House of Commons to the recommendations of the Select Committee, with special emphasis as to the drawing up of "some short code for the more convenient administration of justice." One member proceeded to suggest a further addition to clause 7 in reference to a proposed extension of the summary jurisdiction of the Supreme Court from $100 to $500, but the suggestion was rejected, on the ground "that in the hands of the present Chief Justice there could be no objection to the extension of authority, but in the event of losing him the propriety of committing such power to any other that might supply his place was more than doubtful,"—a well-deserved compliment paid to Chief Justice Hulme.

**A short Code for the more convenient administration of justice. Extension of the Summary Jurisdiction of the Supreme Court. Compliment to Chief Justice Hulme.**

**Public representation in the Legislative Council.**

A portion of paragraph 7 in the draft memorial was now incorporated in paragraph 8, which itself stood modified also in an amended paragraph 9, these two latter paragraphs then reading as follows:—

As to public representation in the Legislative Council:

8. "Your petitioners further represent that although this Colony has been established for upwards of seven years, the inhabitants have no share in the Legislature either by elective representatives or by nominees selected by the

* See *ante* Chap. IX., p. 195, and Chap. X., p. 198.

Governor, a privilege which has not been withheld from any other British Colony."

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## And as to the forms and fees in the Supreme Court:

Forms and Fees in the Supreme Court.

9. "Your petitioners cannot too strongly express their conviction of the bad moral effect produced in the minds of the Chinese by the present system of forms adopted in the Supreme Court and by the heavy fees authorized to be levied by the Court, in consequence of which the ends of justice were too often frustrated—whereas these forms and fees in the opinion of your petitioners should be the simplest and lightest that circumstances will admit of."

Mr. Parker upon the want of interpreters in the Supreme Court.

Mr. Parker made some remarks upon the want of an interpreter to the Court. In civil cases there was no interpreter. For the last three months the Chinese had been obliged, he said, "to go away without being enabled to enter their cases for the want of one, so that the Summary Jurisdiction was in effect closed to them." In criminal cases, Mr. Caldwell, the Interpreter, was also Joint Superintendent of Police "and was very frequently the principal witness against them." He could mention a case which had lately occurred in which the person who was obliged to interpret for the plaintiff was the principal witness against him. However upright a person might be, the two offices were incompatible.

Disgraceful state of affairs.

This was a disgraceful state of affairs, and one which, it will be remembered, was touched upon in this work so early as in 1841 shortly after the cession of the island,* and which makes one wonder at this advanced period of the Colony how the Court work was got through! Mr. Parker, however, having proposed no motion, the matter was not further discussed. As will be seen even as late as in December, 1850, matters in the way of interpretation had not improved, for on one occasion it will be found recorded that, at the trial of a case at the Criminal Sessions held on the 16th of that month, a Juryman objected to the interpretation of one of the interpreters,† good grounds for which undoubtedly existed, though the juror seems naturally to have hesitated giving his reasons publicly for objecting. The petition and memorial having now been settled, the meeting dissolved. Both had now been essentially improved, but neither, it was considered, had really grappled with the principal hindrances to the growth of a flourishing native trade, the only one materially influenced by measures of the local Government. The last clause of the petition indeed condemned the difficulty and expense of obtaining justice in the Supreme Court, as if that had been the only evil felt by the Chinese, or as if the Supreme Court were the only institution that needed reform so far as they were concerned. The clause had, in some respects, been greatly amended, but was still objectionable in attributing the

Memorial settled.

Comments.

* See Introduction, *antè* p. 10.

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present system of forms and fees to the Supreme Court which had no option but to carry out the one and exact the other. Both were prescribed by the *Regula Generalis*, which, "amended"—that is, with additional forms and heavier fees—purported to have "passed the Legislative Council of Hongkong the 11th day of March, 1847." The same power that made the law could improve it, and without denying that such an improvement might have been called for, it was by no means a subject proper to be laid before the Imperial Parliament, which, in modern times especially, did not venture to make laws for the local government of Colonies. As the parties were subsequently apprised, the memorial left by the mail of the 29th January. Full consideration appeared to have been given by the Home Government to the subjects mooted, and the result will be found embodied herein under date of October of this year.

**The memorial sent Home.**

**Publication of draft Ordinances. An Ordinance to repeal Ordinance No. 6 of 1847. A departure.**

On the 30th, was published the draft of an Ordinance to repeal the Ordinance No. 6 of 1847, which related to an extension of the summary jurisdiction of Police Magistrates and Justices of the Peace. The publication of this draft Ordinance was a departure from the course hitherto followed, which had been never to publish the Ordinances until *after* they had passed the Legislative Council, and this, it was considered, was of good augury and had presumably been done with the object of enabling the public to express their views upon the merits of the Ordinance. In any case, however, what was called the "liberality of Mr. Bonham" was greatly appreciated and duly recognized. Be that as it may, drafts of Ordinances to be submitted to the Legislature, appear after this date to have been regularly published.

**The liberality of Mr. Bonham. Draft of Ordinances regularly published.**

**Bulk of Criminal Cases to be tried in Police Court.**

By the Ordinance under consideration it was proposed to remove the bulk of the criminal cases from the Supreme Court, where they were tried by a Judge and Jury, to the Police Court where they would be settled by a Magistrate, who was "not even a lawyer," without a Jury, and that justice might be placed the more effectually under control, it was enacted by the 13th section that the Magistrate, a mere creature of the Executive, might discharge, bail, or commit "without taking down in writing any part of the examination,—a most unconstitutional and dangerous power making the Magistrate altogether irresponsible for his procedure." Though the title bore that its object was to repeal Ordinance No. 6 of 1847, the Ordinance was rather, what Sir John Davis would have termed, to "amend" Ordinance No. 6,—a great part of which was now re-enacted without any material alteration. It was, however, worthy of note, as showing the altered state of public feeling, that while

the former Ordinance scarcely attracted any remarks, the present one had excited considerable alarm and disapproval. In 1847 the Supreme Court was for some time over-burdened with most trifling cases, many of them offences against property which could easily have been disposed of by the Magistrates, but by which the Chief Justice and Juries were detained four or five days every alternate month. As a remedy against this evil, Ordinance No. 6 of 1847 was consequently favourably received. Since then, so many nefarious attempts had been made to interfere with the due administration of justice and to convert the Supreme Court into a political engine,—during the suspension of Chief Justice Hulme the public felt themselves so defenceless against the caprice or malice of the man who occupied his place,—that, finding the unbending character of the respected Chief Justice and the incompatibility of the Court altogether with the purposes to which it was wished to convert it, it was surmised an attempt was being made to get rid of it and to substitute something more "pliant" and workable in its place; any measure therefore tending in any way to interfere with or abridge the privileges of the Supreme Court naturally and necessarily created the greatest alarm, and this feeling was in no way diminished by the proposal to transfer the authority to the Chief Magistrate's Court. There was no wish to insinuate anything against the uprightness of the official who held the position of Chief Magistrate, but it was a well-known fact that he did not possess the confidence of the public.

Considerable alarm and disapproval.

Ordinance No. 6 of 1847.

Nefarious attempts to interfere with the administration of justice.

No insinuation against Mr. Hillier, though no confidence in him.

His readiness to be guided by the will of his superiors, joined to the fact of his *excluding the public from his Court*, had by no means counteracted the opinion previously formed of him—showing the discreditable opinion which the public up to this period even, held of Mr. Hillier, the Chief Magistrate. He did not possess the requisite legal qualification, nor indeed any legal qualification at all, except such as he had acquired by reading since his appointment.

Guided by the Executive.

Public excluded from the Police Court.

Discreditable opinion held of Mr. Hillier.

In the Police Court, a reformation was required that justice should not be turned from its natural channels nor the laws put under the administration of uneducated Police Magistrates. If this draft Ordinance was really to become law, it was a necessity that Mr. Hillier should be provided for otherwise in the public service, and a vacancy made for a legally qualified Magistrate. One of the most objectionable parts of the new draft was, that while it extended the Magistrate's power to a higher class of offences, as well as enlarged the degree of punishment he could inflict, and left it equally unnecessary that any other should be present to sanction or modify his decision, it withheld the power of

Reforms asked for in the Police Court.

Objectionable portions of the Bill.

Power of appeal to

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Supreme Court withheld. Ordinance No. 6 of 1847, s. 7. Sir John Davis and Consular decisions. The intent of the proposed measure.

appeal to the Supreme Court as contained in Section No. 7 of Ordinance No. 6 of 1847. This had a most suspicious resemblance to the means by which Sir John Davis withdrew the right of appeal from the Consular decisions when he found their irregularities were likely to be made the subject of review before the Chief Justice.* The intent of the Ordinance, it was said, was to relieve the Supreme Court where the cases were so numerous that the Judge could not attend to them. But it was not known that Chief Justice Hulme had ever complained of the labour entailed upon him, and if he was willing to hear all the criminal cases that came before his Court, there could be no grounds for legislative interference. The community had perfect confidence in him; in the Magistrate, even with his present limited powers, they had not that degree of confidence which it was desirable should exist, and if the Legislature encroached upon the one Court and granted unconstitutional powers to the other, it required no prophetic vision to predict trouble and vexation. Chief Justice Hulme had already saved the Colony the expense of one Court—the Court of Requests—by adjudicating in civil matters where the sum involved did not exceed $100, though there seemed something derogatory in the respect due to the Chief Justice of the Colony, when he was required to adjudicate upon the small claims that were brought before him. In no other Colony was the drudgery of a small debt Court imposed upon a Chief Justice; from this it was reasonable to conclude that, so far from wishing to be relieved of a portion of his proper duties, he viewed the Ordinance with abhorrence. The points brought out in the proposed Ordinance were sufficient to prove that it violated British law and Colonial legislative power, which latter, harsh as it sometimes was, never deprived the Colonists of a privilege dear to every true English heart—trial by Jury. This was the very corner-stone of the Constitution, and when displaced, and the Courts, inferior or superior, placed under the control of the Executive, British liberty will have ceased to exist and the mother and mistress of empires will have reached the last stage of national senility.

Chief Justice Hulme had never complained.

Confidence of community in him.

Drudgery of a small debt Court imposed on the Chief Justice.

The Chief Justice and the proposed Ordinance.

Points brought out in the proposed Ordinance.

Tenders for passages for convicts to the Cape of Good Hope and Penang.

On the 7th February, under the order of the Home Government alluded to in September last year,† the Governor directed that such British soldiers as had been sentenced to transportation be sent by the first convenient opportunity to the Cape of Good Hope there to undergo the punishment to which they had been sentenced, and on the same date tenders were called for

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* See *antè* Chap. VII., p. 137.

† *Antè* p. 210. See also Chap. XII. § I., *infrà*, where it is shown that the Cape Colonists disapproved of transportation to their Colony.

for passages for two European convicts to the Cape and for nine Asiatics to Penang.

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The Criminal Sessions opened on the 15th February, there being seventeen cases set down for trial. None of them call for special report at this time.

February Criminal Sessions.

Intimation now reached the Colony that Dr. Bowring, M.P. for Bolton, whose name must now be familiar to the reader in connexion with motions in Parliament having special reference to Hongkong or Chinese affairs, had been appointed British Consul at Canton in the place of Mr. McGregor who had left in March, 1848. As Dr. Bowring was well acquainted with mercantile affairs and had always, in his place in Parliament, taken great interest in Chinese affairs besides being the advocate of liberal measures, the news of his appointment was received with satisfaction. As a literary man, Dr. Bowring held a high rank among what may be termed the useful and practical writers of the day; his parliamentary career had been marked by much zeal for the interests of his constituents and the country at large, and by unceasing assiduity in the performance of the responsible duties of a legislator. Like all other prominent public men, Dr. Bowring had his detractors, and his appointment was commented upon severely in a Honie paper, yclept *The Journal of Commerce*. It was true that he was not "versed" in the language of China, but where was the one, especially in those days, who could be said to be really so in every sense? Nor was he *practically* acquainted with the trade of the country, but although these were recommendations, they were by no means absolutely essential, at least until then they had not been thought so,—as witness all the Consular appointments. Dr. Bowring was announced to have already left England, and his arrival might be looked forward to in March. He would therefore enter upon office at a time when a man of good judgment was especially required for the important and responsible appointment of British Consul at Canton.*

Dr. Bowring appointed British Consul at Canton in the place of Mr. McGregor.

His previous career.

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* In the *Parliamentary Companion* for 1847, the following short biography appears in reference to Dr. Bowring:—

"*John Bowring*, LL.D., (Bolton), eldest son of Charles Bowring, Esq., of Exeter, whose family was for many generations connected with the woollen trade of Devonshire, born 1792; married in 1816, Maria, daughter of Samuel Lewin, Esq., of Hackney. Has honorary diplomas from the Universities of Holland and Italy; is a Fellow of the Linnæan Society of London and Paris, of the Historical Institute of the Scandinavian and Icelandic Societies, of the Royal Institute of the Netherlands, of the Royal Societies of Hungary and Copenhagen, of the Frisian, Athenian, and various other Societies; was for many years editor of *The Westminster Review*; has published a number of works on foreign languages and literature, on politics and political economy, and translations from several languages. Dr. Bowring was employed by Earl Grey's Government, with Sir Henry Parnell, in the investigation of public accounts, and served with Mr. Villiers as Commercial Commissioner in France, to arrange the basis of a treaty of commerce with that country. Has made several reports on free trade and public accountancy. Is a Radical Reformer. Unsuccessfully contested Blackburn in 1832 and 1835, but in the latter year was returned for Kilmarnock; had no seat in Parliament from 1837 till 1841, since which date he has sat for Bolton."

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**Murder of Captain Da Costa, R.E., and of Lieutenant Dwyer, Ceylon Rifle Regiment, at Wong-ma-kok.**

A party of four military officers consisting of Captain Da Costa of the Royal Engineers, Lieutenants Dwyer and Grantham, and Dr. Tweddle, of the Ceylon Rifle Regiment, set out from their quarters at Stanley about 4 o'clock in the afternoon of Sunday, the 25th February, on a stroll towards the village of Wong-ma-kok, situate on the level of a small and high peninsula which divides Tytam Bay from Stanley Bay on the southern side of the island, and distant about ten miles from Victoria. The party, after proceeding about half a mile towards this hamlet, separated, Captain Da Costa and Lieutenant Dwyer continuing their way to the village, where they met their death.

**They had had a champagne tiffin.**

As will hereafter be seen, it would appear that Captain Da Costa and Lieutenants Dwyer and Grantham had a champagne tiffin in the quarters of Dr. Tweddle. They met at two o'clock, and, after spending a couple of hours together, the party broke up for a walk, Captain Da Costa especially being in high spirits at the prospect of shortly going Home; but, according to the evidence of the survivors, none of them were intoxicated, although the Chinese witnesses at the inquest upon the body of Captain Da Costa, probably judging by their frolicsomeness, asserted that both Captain Da Costa and Lieutenant Dwyer were drunk.

**The Chinese evidence as to the murder.**

According to the Chinese evidence adduced at the inquest, it would appear that the two officers had entered the village towards dusk "in a state of intoxication"; that they proceeded from house to house inquiring for women until they came to the house of an old man (the last house in the village); that when they entered, his wife and daughter-in-law were engaged in cooking; that "the shorter and stouter of the two" commenced by taking liberties with the young girl, and that on being remonstrated with by the old man and his wife, the latter officer struck them both with his stick with such severity as to draw blood; that upon this the old man rushed to the door of the house and cried out to the neighbours—"Save our lives! Save our lives!!"—upon which the villagers came and took hold of the officers by the hand to pull them out of the house, when the officers resisted and beat them also with their sticks. Upon

**Taking liberties.**

**The Chinese outlaw and pirate Chui Apo.**

this, a Chinese outlaw, named Chui Apo, a pirate by profession upon whose head the Chinese Government had for years set a large reward, with his men, rushed in armed with spears and attacked the officers in the house. The officers upon retreating were hotly pressed by Chui Apo and his spearsmen, overpowered, and struck down. After satisfying themselves that their victims had been sufficiently butchered, they slung the bodies upon bamboo poles, and, proceeding to the beach to a precipice called "Bluff-head," hurled them into the sea which washed its base.

**The officers hotly pressed and overpowered.**

As Captain Da Costa and Lieutenant Dwyer had not returned at three o'clock the next morning, Lieutenant MacDonald set out with an armed party in search of them, but discovered no trace of the missing officers. Information was immediately conveyed to the authorities. Messrs. May and Caldwell, of the Police, proceeded to Tytam to make inquiries, one hundred of the Ceylon Rifles scouring the island as well, and on the 27th February, H.M.S. *Fury* went round to Chûk-chu (Stanley).* At noon on the 26th, no trace of the officers had been discovered, and the village of Wong-ma-kok was found deserted. The body of Captain Da Costa was found in the water on Tuesday evening, the 27th. Six Chinese were apprehended on suspicion, but they denied all knowledge of the murder. The rest of the sad tale is soon told. The parties apprehended were kept separate from the time of their being brought to Victoria until they were produced at the inquest, and the old man whose head was broken, and who said "he did not run away because he had done nothing wrong," and who followed Lieutenant MacDonald to the Barracks and thus became a prisoner of his own accord, whilst the young girl who also came forward voluntarily on the last day of the inquest and who fled before the tragedy had taken place, could have had no communication with the other witnesses in the interim. Under the circumstances the painful fact is forced on one, that by the exercise of a little tact and prudence, the officers might have escaped with their lives if not unscathed, even after they had annoyed the timid girl and struck her father and mother-in-law, —their crowning act being to wrench the spear out of Chui Apo's hand and break it in the attempt to strike a blow at him when he and others came to order and, if necessary, to force them out of the village.

Their bodies hurled into the sea.

Action of the authorities.

The Police and military scour the island.

H.M.S. *Fury*.

Body of Captain Da Costa found.

Arrests.

The sad tale.

The inquest.

The Jury returned a verdict of wilful murder against Chui Apo and several other Chinese. Except Chui Apo, whose arrest was effected in Canton in February, 1851, and whose trial will be found reported in March of that year,† no trace was ever found of the others, though it was surmised for a time that they, as well as Chui Apo himself and his other associates, had perished in a conflict with one or more of Her Majesty's ships engaged in attacking a pirate fleet under the command of Chui Apo. Those arrested on suspicion were discharged. The Government offered, by a first notification, a reward of £100 for the apprehension of any one or more of the parties guilty of the murder, and by a subsequent one £500, for the apprehension of

Verdict of the Jury. Wilful murder against Chui Apo and others.

Suspects discharged.

Government rewards.

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* So named in 1845—see *antè* Chap. III. § II., p. 79.

† See Chap. XII. § II., *infrà*.

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Body of Lieutenant Dwyer never recovered. Funeral of Captain Da Costa.

Chui Apo and $100 for the apprehension of each and every one of the others named in the verdict of the Coroner's Jury. The body of Lieutenant Dwyer was never recovered. The funeral of Captain Da Costa took place on Thursday afternoon, the 1st March, being attended by the Governor, the military and naval officers including those of the U. S. Ship *Preble*, the Chief Justice, the American Consul, and a large number of the other inhabitants. Needless to say, that this sad affair was the talk of Hongkong for a long while and caused no end of a stir at the time.

Appointments of Justices of the Peace.

Probable reason.

On the 27th February, the Government notified that a Commission of the Peace had been issued nominating fifteen of the leading residents of the Colony to be Magistrates and Justices of the Peace, in addition to those already in the Commission of the Peace. The names included the most influential in the community, and doubtless this was done in anticipation of the passing of the new Ordinance extending the summary jurisdiction of the Police Court, but in reality encroaching upon the privileges of the Supreme Court on its criminal side.

Petty Sessions Ordinance No. 1 of 1849 passed by the Legislature. The Ordinance modified to meet public wishes.

Calculated to be useful.

The Petty Sessions Ordinance No. 1 of 1849 for "the Establishment of a Court of Petty Sessions with jurisdiction to deal with certain offences," finally passed the Legislative Council on the 22nd February, and came into operation on the 1st March. The Ordinance had undergone several alterations greatly to its amelioration, for which much credit was due to the Governor. If the same course had been adopted with previous enactments there would have been but little ground for complaint of the want of representation in the Legislative Council, so long as the community had had the opportunity of stating their objections to measures in contemplation, and a desire had existed on the part of the Governor to consider and adopt amendments that were suggested in a fair spirit. Taken altogether, the Ordinance had not only been greatly improved, but was calculated to be very useful, provided the Justices acted, despite of little difficulties, in consideration of the general good that may be expected from a respectable portion of the community giving their time and attention to the administration of justice, and that without the assistance of a lawyer to advise with on points which it was no great disparagement to be imperfectly acquainted with.

Presence of Justices of the Peace provided for.

That a reformation was called for in the Police Court was very generally admitted, and so far as the Ordinance provided or appeared to provide for the presence of Justices of the Peace, it was good. But this concession had been coupled with a dangerous encroachment on the old established Courts of Law;

Courts approved of by experience and usually respected by British Colonial legislators. The evil would counterbalance the regular attendance of Justices of the Peace even were they to be present daily, but provision was only made for their attendance one day in the week (the day the Petty Sessions was held) and then their presence was optional. It appeared, therefore, that the Police Magistrate's Court remained unaltered. Five days in the week the Magistrate was to sit alone, having full power to dispose of all cases coming within the jurisdiction of the Police Court. On the 6th day, he sat as Judge of the Petty Sessions, and if any of the gentlemen whose names were on the Commission, chose to be present, well and good; but if not, Mr. Hillier individually as Judge of Petty Sessions had been put in possession of certain duties properly devolving upon the Chief Justice and a Jury. The community, under the circumstances, might well have viewed this new Ordinance calmly and have inquired in what the public had been benefited? In the first place, the Police Court was left precisely as it was; in the second, the Supreme Court had been deprived of part of its natural rights; and in the third, an irregular 'little Court' had been formed where Mr. Hillier occupied the seat of Chief Justice Hulme! and where a Jury was represented by a Justice of the Peace, if one was present; and if one was not present, Mr. Hillier was both Judge and Jury!

Police Court remained unaltered.

Mr. Hillier discharging duties devolving upon the Chief Justice and a Jury.

The Court was to be held once a week—in the draft two days had been named. A doubtful point was also cleared up—Justices of the Peace had an equal voice with the Chief Magistrate in all proceedings before the new Court.

Simultaneously with the publication of the Ordinance, appeared a notification, as stated before, intimating that fifteen gentlemen had been placed in the Commission of the Peace, in addition to those already in Commission. There was, therefore, no dearth of Justices, and the only course now was, to wait patiently to see how the scheme would work. As will be seen hereafter, the Ordinance remained in force until the 22nd March, 1862, on the passing of Ordinance No. 6 of that year.*

More Justices of the Peace.

No dearth of Justices.

Ordinance No. 6 of 1862.

By a Rule of Court, which passed the Legislative Council on the 1st March, it was ordered that in addition to the sittings of the Supreme Court already established by Rule of Court of Easter Term, 1847, for the trial of civil causes and actions, there should in every year be sittings at Nisi Prius on the 10th day of July and following days, and on the 10th October and following days.

Sittings at Nisi Prius.

Some time since, a memorial was forwarded to the Governor by the auctioneers of the Colony praying for the abolition of

Auction duty

* See Vol. II., Chap. XXXVII.

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abolished and licences granted.

the auction duty levied by section 9 of Ordinance No. 5 of 1845. The document was sent Home to Earl Grey, and an answer was now received leaving the matter entirely to the Governor. Accordingly, on the 1st March, it was notified that the duty heretofore levied would be abolished, and henceforth auction licences granted to applicants on an annual fee of £150, payable quarterly and in advance.

Land.

Extension of terms of Crown Leases.

In accordance with Earl Grey's despatch of the 4th December, 1848, alluded to in the preceding chapter,* it was notified, on the 3rd March of the present year, that all Crown leases heretofore granted for a term of 75 years might be extended for a further term of 924 years. All tenants of the Crown who were desirous of availing themselves of the concession, on application at the Surveyor-General's Office, received the directions necessary to enable them to obtain prolongation of their respective leases in conformity with the above instructions. This was a measure which had frequently been advocated in the belief that it would tend to give Hongkong property an established and substantial value in the estimation of the Chinese, into whose hands a great portion of it would ultimately fall, the European inhabitants being considered mere birds of passage.

First sitting of Court of Petty Sessions.

The first sitting of the new Court of Petty Sessions under the new Ordinance, previously commented upon, was held on Monday, the 5th March. The attendance of Justices was very large, there being present at one time, besides the Chief Magistrate, Mr. Archibald Campbell, Mr. Rickett, Mr. Braine, Mr. Jones, Mr. Scott, and Mr. Carter. Messrs. Mackean and Lyall also appeared, but as the Bench was full they went away without taking their seats. The cases, except one in which twelve Chinese, belonging to the Triad Secret Society, were charged with assembling for unlawful purposes, were mostly trumpery and occupied the Court till past six o'clock in the evening. Several of the Justices, however, had left before that time, Messrs. Archibald Campbell, Rickett, and Carter only remaining at the close of the proceedings. The rotation according to which the Justices of the Peace were expected to attend the Petty Sessions held every Monday, at 11 o'clock, was published shortly after the promulgation of the Ordinance, the list being prepared from April to December inclusive.

Meeting of China Branch of Royal Asiatic Society in the Supreme Court.

At a general meeting of the China Branch of the Royal Asiatic Society, held on Tuesday evening, the 6th March, the postponed election of office-bearers for the current year took place, when a list was unanimously approved of. The treasurer, Mr. C. J. F. Stuart, reported that the Governor had been asked

* *Antè* p. 205.

that accommodation might be granted for the Society on the street floor of the Supreme Court House, *now used as a church* (pending the opening of St. John's Cathedral); and had great pleasure in stating that after consulting Mr. Hulme, the Chief Justice, a large room, at present used as a vestry, had been set apart for the Society. The Secretary was instructed to express to His Excellency the cordial thanks of the Society for so essential a favour, and it was resolved to remove into the new premises as soon as they were vacated by the church, which was expected to be before the next general meeting.

**Ground floor of Supreme Court also used as a church. Room used as vestry set apart for the Society.**

On the 14th March, the Governor directed that the draft of a proposed Ordinance to amend Ordinance No. 9 of 1845, entitled "An Ordinance to invest the Supreme Court of Hongkong with a Summary Jurisdiction in certain cases," should be published for general information. At the recent public meeting to consider colonial grievances, a proposal had been made, it will be remembered, to petition for the extension of the Summary Jurisdiction of the Supreme Court from $100 to $500, but the objections appeared so strong that the proposal was rejected by a considerable majority, the mover himself declining to proceed with it.* It was understood that the suggestion was then made for the purpose of ascertaining public opinion on the subject; and having been so unequivocally expressed, the proposal might very fairly have been considered as shelved. Nevertheless, within two months, it again appeared before the public in the more formidable shape of a Draft Ordinance which in its main provisions would shortly become law. The chief objection to the extension of Summary Jurisdiction in either the Supreme or the Magistrate's Court apparently lay in the danger which, it was considered, would exist in absolute power being conferred upon such men as may be and had been heretofore called upon to exercise it. The career of a former occupant of the Bench, Mr. Campbell, was still so impressed upon the community, that any proposed measure in connexion with the higher administration of the law never failed to throw suspicion upon the intentions of the Government, composed as was then the so-called Legislative Council, and to impress the community with a nervous dread of leaving its jurisdiction without check, even where no better could be found than attorneys and the common run of juries; and as regards the Magistrates, their unfitness and too ready deference to their superiors, that they could not be safely entrusted with more extensive powers. If the community could have had the assurance of able, upright, active, and independent men to dispense the laws, there would have been less to apprehend from the total

**Draft of Ordinance to amend Ordinance No. 9 of 1845, relating to the Summary Jurisdiction of the Supreme Court, published.**

**Chief objection to the extension of Summary Jurisdiction.**

**Mr. Campbell still on the public mind.**

* *Antè* p. 222.

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abrogation of the existing judicial establishments, with all their lumbering and expensive machinery, than in such curtailments as were now contemplated. But reform should have begun at the other end if intended to reach it at all, and, until it did so, a jealous watch had to be kept on every attempt to remove such restraints on absolute power as existed.

**Mr. Hawes, M.P., on the average disallowance of Colonial Acts.**

A member of Parliament, Mr. Hawes, had stated in the House of Commons recently, that for ten months the average of Colonial Acts disallowed was one in ten, and no one could have questioned the correctness of his statement. This, however, included Canada and all the first class Colonies with elective legislatures and the elements of representation in large and diversified populations. Canada, Australia, Jamaica and other Colonial possessions had a landed 'aristocracy,' a commercial 'aristocracy,' a legal 'aristocracy" and "other aristocracies," not to speak of an abundant supply of radical reformers in all ranks of life. With such materials for popular representation, public matters could with great safety be left to an elective legislature; but widely different was the condition of affairs in Hongkong, and it was with extreme anxiety that the community viewed the Ordinances which were rapidly wheeled through the Council Chamber. Admitting then that it was desirable to extend the Summary Jurisdiction of the Court, it was still objected that the extraordinary powers granted to the Judge might be the means of introducing a system of great intolerance, but evidently the community had still in view the man who as a puppet of the Government had been turned into a vicious tool of the Executive, and at this distance of time even one may well realize how well founded their fears were. But even then Judges were not appointed *durante bene placito*, as the prompt and splendid victory of Chief Justice Hulme over Sir John Davis so clearly proved—"the evil that men do lives after them"—and this it was that had got imbedded into the people's mind here.

**Elected legislatures and elements of representation.**

**Materials for popular representation.**

**Different condition of affairs in Hongkong.**

**The objections to the extension of the Summary Jurisdiction of the Court.**

**Sir John Davis and Mr. Campbell in view still.**

Twelve months ago, it was argued, Sir John Davis was Governor, and Mr. Charles Molloy Campbell, acting Chief Justice. Had a law such as was now proposed then existed, the greatest iniquities would have been perpetrated in the name of Justice. It was true that without a jury judgments must have been limited to five hundred dollars, but they would have been repeated until the aggregate was considerable. Mr. Campbell had done one paper, says a report, "the honour of threatening thirteen prosecutions for thirteen alleged libels." "Had he been even a very little of a lawyer," continued the report, "he would have known that only one libel ever appeared in the columns of the paper so often threatened, and its truth was so notorious, it was so damnatory of Sir John Davis' reputation as

a man of honour, that even he did not dare to drag it into the noon-day light of the Supreme Court and have it scrutinized and weighed by a jury of his countrymen. He allowed it to canker on his jaundiced mind, seeking relief for the burden of hatred and malice which oppressed him, by carrying the warfare into private life, maligning a person whom he had not dared to meet before a fitting tribunal. But enough of a pair whose names were now introduced by the subject under consideration, but who had passed away like a hideous dream, that even their whilome parasites were willing to leave them in an obscurity from which one would not needlessly take the trouble of dragging them." For historical purposes this quotation will be deemed sufficient. *Nous avons changé tout cela.*

Section 5 of the Draft Ordinance gave the power to either party to employ "any friend or agent" to conduct his suit. This provision had been, doubtless, introduced with the view, if possible, of superseding the attorneys of the Court, leaving it nevertheless optional to employ them under the restriction that should the Court consider that their assistance was not necessary, their costs would be disallowed. Taken in connexion with the grievances regarding attorneys which was mooted at the public meeting at the commencement of the year, no doubt some would have had it believed that the machinery of the Supreme Court could be worked, especially in those days, without the aid of attorneys, but with a community of whom eight-tenths could not and one-tenth would not conduct their own causes, attorneys, it is to be feared, are necessary evils. It is true, however, that rules of practice and procedure have now-a-days been enormously simplified and that with perhaps the introduction of English rules into the Colony, the necessity for the employment of attorneys in cases, on the summary side of the Court at all events, might be dispensed with to a great extent, especially with the aid of an efficient staff of officials in the Registry who could and would render assistance to parties of every class, but which at the time under consideration apparently did not exist.

**Section 5 of the Draft Ordinance. Power to employ 'friend or agent' to conduct a suit.**

**The Attorneys.**

**Attorneys necessary evils.**

**Rules of practice and procedure simplified.**

**Effect of possible reforms.**

There was no permanent interpreter attached to the Court, another subject, it will be recollected, mooted at the adjourned public meeting in January last.* A Chinese suitor then, could not and, in fact, was not allowed to take a single step in a civil suit without an interpreter, though the Court officers could have had no difficulty in giving directions as to most of the common preliminary forms, but apparently, from the complaints made, they did not consider it their duty, and this was another wheel

**No permanent interpreter attached to the Court. The evils of such a system.**

* *Antè* p. 223.

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in the judicial machine which required being put in order.

1849.

**Arrival of Dr. Bowring, Her Majesty's Consul at Canton.**

Dr. Bowring, announced in February last, arrived in Hongkong on the 19th March, by the P. & O. Steamer *Achilles*. He thus entered upon the duties of the Consulate at a critical time, but he was a man of experience, judgment, and moderation which, combined with firmness, were essentials in dealing with the Chinese. Contrary to expectation, however, he did not leave immediately for the scenes of his new life, but remained in Hongkong for three weeks, probably studying and making himself acquainted with the various and important duties he was now called upon to discharge. He proceeded to Canton in H. M. S. *Medea* on the 12th April, to assume charge of the Consulate. Of course, it was quite right that nothing should be wanting which was calculated to secure respect to Her Majesty's representative, but it was feared that the moral effect of a man-of-war upon the Chinese had been impaired by recent events. The learned gentleman, however, had the satisfaction of finding matters not quite so bad as they had been represented, for the commercial guilds, feeling assured from Governor Bonham's notification published a few days before Dr. Bowring left, that there was no immediate danger of hostilities, had resolved to resume trade, and on the 16th April the Government notified that Dr. Bowring had assumed on the 13th, the position to which Her Majesty the Queen had been graciously pleased to appoint him.

**Notification of his assumption of duty.**

**Mr. Mercer appointed to a seat on the Legislative Council.**

On the 21st March, the appointment of Mr. Mercer, the Treasurer, to a seat in the Legislative Council was duly gazetted. It will be recollected that, on the suspension of Chief Justice Hulme, Mr. Mercer was given his seat in the Legislature* and not Mr. Campbell, and that, on the reinstatement of the Chief Justice, Mr. Mercer had to make way for him.†

**Accommodation in the Police Court. The reporters and acoustic arrangements.**

Complaints were now heard as to the want of proper accommodation in the Police Court, there being no accommodation at all for the reporters. Apart from this, the acoustic arrangements were so bad that it was said "even close to the rails which hedged in Justice," it was impossible to hear distinctly, in consequence of which the Chief Magistrate was asked not to be alarmed at the presence of a reporter in his Court, of which, it is said, he went in dread, for, owing to the great height of the room in proportion to its length and breadth, all sound was lost. It was suggested that "a canopy be raised above the Bench, by which magisterial wisdom would be brought within range of the auricular organs of those who preferred an humble stool on the floor to an exalted seat above an open sky-light." Unless it was the

* See *antè* Chap. VIII § I., p. 170.
† *Antè* Chap. X., p. 199.

object of the Government to exclude the public from the Police Court altogether, it was suggested that the Court should be removed to another locality. Apart from its inconvenient situation, the Court was quite unfit for a public room from its construction. Sir John Davis had purchased a huge stock of a building ostensibly for the Supreme Court; more than one-half of it was unoccupied by that Court.* For a moiety of the purchase money a suitable Court House could have been built, and some £200 a year ground rent saved to the public purse. However, if Sir John Davis had made a curious bargain, it was no reason why the most should not have been made of it, and, as a suitable Police Court was really required, the dear purchase might have been turned to some account. The Supreme Court occupied the upper part of the building; on the lower floor there were half a dozen fine apartments each fit for a Police Court. One was occupied by the "Asiatic Society" who, it will be remembered, had, at a meeting held on the 6th March, stated that they had been granted one of the rooms; two were occupied as a dwelling-house by one of the bailiffs; one by the coolies attached to the Court, and three by the schoolmaster. Such a building was never intended for such a purpose, and it was therefore hoped that it would be made available for a Police Court, where people could hear what was said, and especially "not have to run the risk of a brain fever by toiling up to it under a tropical sun." The Police Court, however, was never moved from its site, notwithstanding the frequent and just representations made as to its unsuitableness, more especially by the deputation of Justices of the Peace to the Governor as hereinafter referred to, but remained where it still is, in Wyndham Street.

Inconvenient situation of the Police Court.

The Supreme Court Building and its utilization as a Police Court as well.

The ground floor considered fit for a Police Court.

The ground floor of the Supreme Court, how utilized then.

Police Court was never removed from its site.

At the April Sessions of the Court, held on the 16th April, one Hon Arkeun, convicted of burglary and stabbing, was sentenced to death, but, by proclamation of 3rd May, the sentence was commuted to transportation for ten years.

April Criminal Sessions. One sentence of death commuted.

The Ordinance No. 3 of 1849, to extend the Summary Jurisdiction of the Supreme Court, which formed the subject of so

Ordinance No. 3 of 1849, to

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*See the speech of acting Chief Justice Snowden, in the Legislative Council on the 13th June, 1881, upon the subject of the present Supreme Court House, in which he said, *inter alia*, that "Sir Thomas Wade had told him that the building was originally intended for commercial rooms, and that after some time, either the interest in the commercial rooms died out or it was not found suitable, and the Government took over the building for the purpose."—See Vol. II. of this work, Chap. LXXIII. Further references as to the Supreme Court House will be found *antè* Chap. VIII. § II., p. 183, and Chap. XVII., *infrà*; and in Vol. II., Chap. XXXV. (where the thanks of the newly-created Chamber of Commerce are conveyed to the Governor and the Chief Justice for placing a room in the Court House at the disposal of the Chamber); Chap. XXXVI., XXXVIII., XXXIX., XLV., LII., LXXXIII., LXXXVII, and LXXXIX.

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much comment when the draft of it was first published, passed the Legislative Council on the 19th April, and was ordered to come into operation on the 1st May. It was only necessary to refer to one important amendment and to express satisfaction at the Governor's regard for public opinion in repealing that obnoxious part of the Ordinance which referred to actions for damages. These were, as formerly, left to a jury, the only constitutional way of dealing with such cases. The following clause had been added to the second section :—

extend the Summary Jurisdiction of the Supreme Court, is passed.

Governor's regard for public opinion.

Obnoxious part referring to actions for damages repealed.

"And that the said Court shall not have cognizance under this Ordinance in any case of libel, or slander, or assault, or assault and battery."

Actions for libel, slander, and assault left to the Jury.

All such actions were therefore to be tried by a jury and not left to the decision of the Judge alone,—a provision the necessity for which had become every day more evident. Here a constitutional protection had been most properly retained ; and in its departures from usage in other respects, it was hoped the Ordinance would be found to work better than was anticipated, especially as regards Chinese suitors. In simple questions of debt, the Ordinance was an acquisition at least to the poorer class of suitors. The expenses in the Supreme Court had, it was known, deterred people from suing and defending suits where the sums in dispute had ranged from one to five hundred dollars. Law was always uncertain, and prudent men had abandoned reasonable claims rather than incur the certain expense of an uncertain verdict. It was hoped that the fears expressed of further innovations upon the Courts of Justice would prove groundless.

Constitutional protection.

Simple questions of debt. Ordinance an acquisition.

Governor Bonham, a good common lawyer.

Governor Bonham had the reputation of being a good common lawyer, and his attainments were not questioned, but for his own comfort he was asked to avoid seeking precedents for colonial laws in the territories of the East India Company, where he had previously served. The odium which attached to unconstitutional legislation would rest entirely upon the Governor.

Odium attaching to unconstitutional legislation.

Moderate schedule of Attorneys' fees.

A schedule of fees accompanied the new Ordinance, and certainly the attorney's fees appeared moderate. Whatever the complaints about attorneys, especially at this time, it is certain that they could not be dispensed with, and, with that fact borne in mind, to get respectable men, there must be some greater inducement than a mere pittance. A lawyer receives an expensive education, generally many years of manhood are passed in qualifying him for his profession, and no one with a knowledge of affairs could appreciate the feeling which would pare down his remuneration until he could not possibly support a respectable appearance.

Necessity for attorneys.

A lawyer's education.

Attorneys' bills and the taxing officer.

It is true that attorneys have opportunities of "painting" their bills of costs, but then the pen of the taxing officer is also ever ready to draw harsh lines which destroy the breadth and length of the picture, much to the annoyance of the artist, and the great relief of the client's cash box, which is not always over-burdened after litigation. It had not been suggested that the attorneys in Hongkong were fond of the brush, but only the check upon such amusements was pointed out, and if people paid a decorated bill of costs, of course they had but themselves to blame.

April Sessions of the Admiralty Court.

At a Sessions of the Vice-Admiralty Court held on the 25th April, the Chief Justice presided, Captain Keppel, of the *Hæander*, and Mr. Hillier being also present. The calendar was a short one and consisted of the usual cases of robbery and piracy.

Piracy in neighbouring waters.

Piracies had been very rife again for some time—three Englishmen and one American being murdered on board an English cutter in the Canton river some short time back, whilst a China cargo boat was boarded and carried off by pirates in the harbour of Hongkong, and within range of the men-of-war. The neighbouring waters swarmed with pirates, and yet nothing but an occasional and desultory movement was taken to suppress them.

Capture of pirates by H.M.S. *Inflexible*.

On the 30th April, H.M.S. *Inflexible* surprised and captured forty-five pirates at the Great Lema off Tinquae, several of whom had taken part in the piracy of a vessel and the murder of the greater part of the crew, off the Nine Islands on the 19th April. They were brought in and underwent an examination before the Magistrate, nine of them being eventually committed for trial. The rest were discharged, it having been found that most of these last, so far from belonging to the gang, were prisoners in the hands of the pirates at the time they were surprised by the *Inflexible*.

Nine committed for trial.

Earl Grey's reply to Mr. Tarrant.

Mr. William Tarrant, whose case has already been referred to before, now received an answer to his memorial to Earl Grey.* Sixteen months had now elapsed since he was virtually declared innocent by the abandonment of an uncalled-for prosecution, and nearly two years since he was suspended from duty.† During that long term he had been out of employment, with a wife and family to support. On application to the late Governor, he was told that, on the score of economy, the office of Registrar of Deeds, which he held at the time of his suspension, had been joined to that of Book-keeper; but as Mr. Tarrant was the oldest servant in the Department, he was surely entitled to the joint appointment in preference to a comparative stranger. It had been predicted locally, before Mr. Tarrant's suspension, that for being "more

Poor compensation.

Pretext for getting rid of him.

Prediction he would be got rid of for

* *Antè* Chap. VIII. § I., p. 170.
† See Chap. VII., p. 143.

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being 'more honest than politic.'

His case.

honest than politic" he would "probably enough be rewarded by the loss of his office or by having such indignities or hardship heaped upon him as would compel him to resign." The prediction had been but too well verified by the result, Mr. Tarrant having been victimized with cool deliberation. The charge of conspiracy, it was believed, was got up as an apology for suspension from duty; the appointment was joined to another as an apology for refusing to reinstate him; and the claims of six years' service were set at nought, and a faithful servant cast aside because, as was stated, he was "more honest than politic." It will be remembered that it was after the prosecution had been abandoned at the Criminal Sessions in December, 1847, that Mr. Tarrant laid his case before Earl Grey. In the multiplicity of business in the Colonial Office urgently pressing upon the officials there, it was not until the April mail of this year that Mr. Tarrant got a reply. The Secretary of State ruled that Mr. Tarrant should receive his pay from the date of his suspension, until his office was combined with another—in all about two months. After a vexatious delay of nearly a year and a half, this was but miserable redress in a pecuniary light; but as an acknowledgment of the injustice with which he had been treated, it was satisfactory. Severe, but well deserved, were now the comments passed upon the responsible authorities for the shabby treatment meted out to this man. The suspicious element throughout this matter was the disappearance of Major Caine's compradore,* showing the evident guilt of the latter† and therefore that Mr. Tarrant was at least right in his surmise that he had practised extortion while using his master's name as a cloak. "Mr. Tarrant," says a local exponent of public opinion of the time, "was not the first person who had been victimized for having had the courage to expose corruption in the Colonies, and there was a possibility of this very case being brought forward in illustration of the abuse of power exhibited in the every-day actions of the Governors of our dependencies. Men barely fitted for the duties of a Police Magistrate, whom nobody ever heard of in England, flutter for a few years in obscure nooks in all the counterfeit dignity of 'Your Excellency'; their vanity is ministered to by the most contemptible of all parasites, and forgetting that they do represent Royalty, that it is the Royalty of England and not of Russia, they are, so far as they may (though fortunately there are legal boundaries which they cannot cross) the veriest little despots in existence. Far be it from us to assert that all or even the bulk of Governors are such as we describe, but Mr. Tarrant's treatment is sufficient proof that

Secretary of State's decision. The back pay allowed him.

Acknowledgment of injustice.

Public indignation.

Opinion as to the Governors of the Colonies.

* *Antè* Chap. VII., pp. 144, 150. See also the end of this chapter, where Mr. Tarrant asks that steps be taken consequent upon the return of Major Caine's compradore to the Colony.

† "He who flees judgment confesses his guilt."—Co. 3 Inst. 14.

we have had one such worthless creature in this Colony.* The very combining of the office of Registrar of Deeds with another was an act of low cunning more befitting a Yankee Pedler than an English gentleman. The duties of Registrar are still performed and must be performed as long as this is a Colony, though by a person now designated Bookkeeper! The charge was brought about to insure Mr. Tarrant's ruin,—had the office not been nominally abolished, he would now have been reinstated and received his full arrears of pay."

Mr. Tarrant's case fully investigated in Major Caine's action for libel against him.

As will be seen hereafter, not until September, 1859, when the matter will be found fully noticed, were Mr. Tarrant's case and his grievances fully investigated consequent upon an action for libel brought against him by Major (then Colonel) Caine, and when Mr. Campbell's report upon his investigations of the charges brought against Major Caine's compradore, and heretofore suppressed, was made public.†

May Sessions of the Admiralty Court.

On Saturday, the 26th May, a Sessions of the Court of Admiralty was held for the trial of the pirates captured by H.M.S. *Inflexible*. The Commissioners present were the Chief Justice, Major-General Staveley, and Captain Keppel, R.N. A Special Jury having been empanelled, the Chief Justice addressed them shortly, and after retiring, they returned with a true bill against the prisoners. Seven prisoners were placed in the dock, and the Court then proceeded with the examination of the witnesses. After the evidence against the prisoners had closed, one was discharged, there being no evidence against him. The Jury, without retiring, returned a verdict of guilty against the six others. The Chief Justice, having consulted with the Commissioners, remarked that the atrocious crime of which the prisoners had been found guilty upon the clearest evidence was of such common, he might say daily, occurrence, that the Court was determined to do its duty in attempting to put a stop to it by the infliction of the most severe punishment upon the perpetrators. He then proceeded to pass sentence of death upon the prisoners, adding that he could hold out to them no hope of mercy in this world. After their sentence, the prisoners made repeated attempts to strangle themselves in gaol, and the authorities were under the necessity of depriving them of their tails to prevent them from carrying their purpose into effect. On Thursday morning, the 7th June, the six pirates were executed at West Point. As there was barely room on the scaf-

Six pirates captured by H.M.S. *Inflexible* sentenced to death.

They attempt suicide in gaol.

Their 'tails' are cut off.

Dreadful execution.

* The writer evidently forgot in this case that Major Caine was the moving and interested spirit, and that Sir John Davis must have acted upon his advice apart from that of Mr. Campbell, as was stated at the time of the withdrawal of the prosecution.—J. W. N. K.

† See Chap. XXIX, *infrà*.

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fold for three, the others were taken to the back of the naval stores and kept there till their comrades were cut down, by which time one fainted, and it was necessary to carry him up to the hill to the gallows and support him upon it till the bolt was drawn. During their imprisonment they had been regularly visited by the Catholic clergy, zealous in the labour of conversion, and they died nominal Christians, and with one exception as stated above, the criminals showed great firmness on the scaffold. The duty of executioner was entrusted to an American whose brother had been killed by pirates some years before.

An American executioner.

Complaints against Marine Magistrate.

Complaints about the Marine Magistracy were now formulated. It was alleged that while the most frivolous complaints were listened to, if brought forward by the crew against the masters, masters could obtain no redress when they complained of riotous and disorderly seamen. The masters were fined heavily on all occasions, either for breaches of the harbour regulations or under the Merchant Shipping Act; but they were not protected from the outrages of the men, and consequently discipline was relaxed and the port had obtained a bad name among shipmasters. Mr. Pedder acted in a threefold capacity. First,—he was a surveyor of shipping; second,—Harbour Master: it being his duty as such to prosecute under the harbour regulations; and third,—he was Marine Magistrate, and as such sat as a Judge, where in his second capacity he was often himself the prosecutor. Any arrangement more objectionable, it was contended, could not well be imagined. No charges were preferred against Mr. Pedder particularly, but the system was considered vicious, though to this day it has undergone but few, if any, changes at all; it was for Government to satisfy itself where reform could be applied, the whole mercantile community were concerned, and it rested with the Government to do what was needful.

Port a bad name among shipmasters.

Mr. Pedder's threefold duties.

Government reform asked for.

No improvement yet visible in the administration of justice in the Inferior Courts.

When Sir John Davis was got rid of, people were sanguine of important changes. As a member of society Mr. Bonham was vastly superior to his predecessor, and there was consequently a decided improvement in the social system; but when this had been said, that was nearly all that could be said, for no improvement or real change was yet visible in the administration of justice in the Inferior Courts. A *bonâ fide* Police Court under the control of Justices, the latter having a seat in the Marine Court as well, and with some control over the Police, was asked for; in short until this was allowed, the Justices of the Peace were not really and truly Justices but mere make-believes.

five, of which number eight were officials, viz., the Chief Magistrate, the Assistant Magistrate, the Marine Magistrate, the Registrar-General, the Superintendent of Police, the Colonial Secretary, the Colonial Treasurer, and the Secretary to the Superintendent of Trade. The first two sat on the Bench in the Police Court three days in the week each; the third presided over the Marine Court when a case presented itself, the fourth, fifth, sixth, seventh, and eighth took no share in the administration of justice at all, but were only kept in reserve for emergencies. Of the seventeen non-officials two were in England, the others with the Chief Magistrate sat in the Court of Petty Sessions, but none of them had a voice in the Police Court which was really their proper sphere of action. The Police Court therefore continued entirely as heretofore, under the control of the Executive, the Court of Petty Sessions being merely an illegal encroachment upon the Supreme Court, and the prudence of the Justices in sitting in that Court at all was seriously questioned; however, waiving that point, there was not a single case brought before the non-official Justices that had not been first heard by the Chief or Assistant Magistrate, and these gentlemen used their discretion in remitting to the Petty Sessions or not. Cases which involved inconvenient inquiries might be disposed of without troubling the Justices. The system was bad. Notwithstanding the parade of Justices, the Police Court of Hongkong was essentially a Government Court,—a Court, it was said, suited to the civilization of Turkey or Egypt, but a disgrace so long as it was conducted on its then footing, and the Justices of the Peace were excluded from it.

List summarized.

Police Court still under control of Executive.

Court of Petty Sessions an encroachment on the Supreme Court.

Police Court of Hongkong a disgrace.

A deputation of the Justices waited upon the Governor, in consequence of strictures which had been passed, to ascertain more clearly the precise nature of their duties, and also to recommend the introduction of a tread-mill, publication of a list of Magistrates in the Chinese language—not one of them had been put in possession of a copy of the Commission—and the removal of the Police Court to a more central part of the town.* One object of the deputation was to ascertain whether the Justices had a concurrent jurisdiction with the Chief Magistrate in the Police Court and with the Marine Magistrate in the Marine Court. They were informed that they might take a seat on the Bench with the Chief Magistrate, *but that they could not interfere with his decisions*; and that in the Marine Court they had jurisdiction in cases which were not connected with the regulations of the harbour. All charges against prisoners were laid before the Chief Magistrate by the Superintendent of Police and

Justices of the Peace wait on the Governor.

Their demands and grievances.

The result.

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alone, the ill-used Justices being graciously permitted to sit on the Bench and listen! The privilege amounted to little or nothing, but they at all events being on the Bench could *hear* what went on, which they could not do in any other part of the curiously-constructed Court. What the community required, and wanted and were entitled to, was one competent Chief Magistrate and one Bench of Justices—nothing more; and until these were supplied no sophistry could overcome the stubborn fact that, in denying this, Justice in Hongkong was manacled.

What their privileges amounted to.

Justice in Hongkong manacled.

Mr. Inglis resigns the Registrar-Generalship.

On the 24th May it was notified that the Governor had been pleased to accept the resignation tendered by Mr. A. L. Inglis, of the office of Registrar-General, and that the duties appertaining to that Department would from the end of May be conducted by Mr. Mercer, the Colonial Treasurer, as a temporary measure. No reason was apparent at the time for this resignation nor do the records of that time show it. Mr. Inglis, as may be remembered, first received the appointment of acting Registrar-General in July, 1845,* being eventually confirmed in the post early in 1847 after the resignation of Mr. Fearon.†

Why he resigned.

As will be seen hereafter, Mr. Inglis resigned in order to proceed to the gold fields of California. But this venture proving unprofitable, he returned to Hongkong, and was fortunate enough to be again taken into the Government service.‡

Parliament and Colonial Retrenchment.

Colonial retrenchment continued to engage the attention of Parliament, Hongkong coming in for some severe comments in regard to its civil expenditure on the 2nd June.

Macao and the case of Mr. Summers and Captain Keppel.

Portuguese religious observance.

An incident which created considerable interest at the time and occasioned some debate at Home occurred in the old Portuguese Colony of Macao on the 7th June, 1849. The English Chaplain at Hongkong, the Reverend Vincent Stanton, was at the head of a free-school wherein Mr. James Summers, an English youth of about eighteen or nineteen years of age, was an assistant-teacher. On the date above mentioned, Mr. Summers, for recreation sake, made a short excursion to Macao, where he landed and walked about the city. In one of the narrow streets, he met a religious procession, before which he saw all the people kneeling and making obeisance. Knowing that this ceremony symbolized doctrines from which he dissented, Mr. Summers declined to uncover himself, though twice summoned so to do, first by one of the officiating priests, and subsequently by a soldier. Upon this he was carried off, though without violence, to the guard-house, where he remained without having been confronted with any Magistrate for the whole of the night. The next morning he was informed that the order

Mr. Summers met a religious procession and refused to uncover himself.

His arrest.

Left to abide the

* See Chap. III. § II., p. 86.
† *Antè* Chap. V. § II., p. 127.
‡ See Chap. XVIII., *infrà*.

for his arrest being a "Governor's order," no intervention of a Magistrate was requisite, but that he would be left to abide the formal decision of the judicial authorities. Pending this trial and sentence, he was removed to another lodging which he discovered to be nothing less than the common gaol. The affair had now become disagreeable, and Mr. Summers naturally looked about for the means of his release. He accordingly despatched letters to the American Consul, and to an officer whom he remembered to have been his companion in the boat, begging their good offices in his trouble, and these he speedily obtained. The American Consul prudently reserved his own intervention until the countrymen of the prisoner had done their best, —a resolution in which he was further warranted by hearing that the affair had come to the knowledge of Captain Keppel, commanding H. M. S. *Meander*, then accidentally lying in the Macao Roads. Captain Keppel's proceedings in the matter were sailor-like. He first called upon the Governor, accompanied by two officers, one of whom was Mr. Summers' fellow-passenger, and, after an explanation of the whole affair, requested the prisoner's release. On being met with a refusal, he sent a formal application in writing to the like effect, and, when no better success attended this method of negotiation, he hailed his boats, mustered the barge's crew, marched quietly to the gaol under the guns of five forts, and within musket shot of the Governor's bed-room, and released Mr. Summers from his confinement. Had the affair ended here, it would probably have created no great talk, but unhappily fire-arms were discharged in the *fracas*, and a Portuguese soldier named Roque Barrache was killed, three others being wounded. Another victim was the daughter of the gaoler, a young girl named Carvalho, of twelve years of age, who, in a state of blind fright, jumped out of a window twenty feet from the ground and received severe injuries on falling.

Decision of the judicial authorities.

Removed to the Common Gaol.

His appeal.

Captain Keppel's action to secure Mr. Summers' release.

The prisoner's release refused.

Released by Captain Keppel.

Fire-arms used.

The victims.

This unfortunate loss of life naturally brought under discussion the conduct of both Mr. Summers and the Governor of Macao. As regards the first of these points, persons were, of course, not wanting to assert the right and duty of a professing Protestant to refuse, under any circumstances, an act of homage to rites partaking, they considered, of idolatory; but a large number were inclined to lament that Mr. Summers should have been so unreasonably rigid in his practice, or, with such opinions, so inconsiderate in his wanderings. He could not perhaps have been expected to recollect that the day he had chosen for his holiday—the Thursday after Trinity Sunday—was the festival of *Corpus Christi*, one of the most famous solemnities of the Romish Church, but

The unfortunate loss of life.

The facts discussed.

Festival of *Corpus Christi* and Mr.

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the seat of Romish doctrines and practices in their most unmitigated form, and that common sense no less than propriety should have prevented his intrusion upon scenes so likely to be perilous. By his own version of the story, he seemed to have been so contumacious in his Protestantism that forbearance was hardly to be expected from the irritated multitude, and it was perhaps well for him that he was marched off in safe custody.

The Portuguese tenure of Macao questioned again.

The second point of the question was both more intricate and more important. It will, of course, be needless to remind the reader that the settlement of Macao is one of the few relics of the colonial greatness of Portugal, but it may be advisable to add that it was not then considered, in the proper sense of the term, an independent possession of that Crown. It was only held conditionally of the Emperor of China, being then absolutely part and parcel of the imperial dominions, and the Portuguese were simply invested with jurisdiction within the limits of the city over their own people. The jurisdiction over subjects of other nations pertained, strictly speaking, to the sovereign of the Empire, and this jurisdiction, in the case of the British subjects, had been formally made over to the representatives of the British Crown.

Mr. Summers amenable to jurisdiction of the Hongkong authorities.

Mr. Summers, therefore, until the treaty entered into by Portugal as late as in 1887, and ratified in 1888, as mentioned under date of January, 1844, in connexion with the Consular Ordinance No. 1 of 1844, even if he had committed a cognizable offence, was, according to strict justice, amenable only to the colonial authorities at Hongkong, and it was at their hands that redress should have been demanded.* On these presumptions, the Governor of Macao would appear to have exceeded his powers and to have fairly exposed himself to summary treatment by his violation of the rights of a British subject.

Governor of Macao and the rights of a British subject.

Captain Keppel's resolution.

Notwithstanding, however, the justification thus derivable from the letter of the law, it will probably be thought at this time that a little judgment and patience on the part of the British commander might have terminated the affair more pacifically and creditably; but on this point, too, Captain Keppel's resolution admitted of much defence. The refusal of the Governor to release his prisoner was coupled with an intimation that he would be tried "in course of law" by proper judicial authorities, and this "course of law" in a Portuguese colony was well known to be exceedingly slow. More than one instance, in fact, had actually occurred within the last ten years in which British subjects had died from incarceration in the very gaol where Mr. Summers had been confined, and, as the *Mæander* was about to leave these waters instantly, her commander had reason to conclude that no time should be

The Governor of Macao and the 'course of law' in a Portuguese Colony.

British subjects dying in Macao Gaol.

* Upon this point see *antè* Chap. I., p. 35, n.

lost if the life of his countryman was to be saved. So little seriousness was attached to the affair, that the *Mæander's* boats, after doing this piece of service, entered themselves at a regatta which was just coming off, and won sixty dollars' worth of prizes the same evening, after which the frigate sailed for Manila.

After releasing Mr. Summers, the *Mæander* gets up a regatta.

It was perhaps rather fortunate that the Governor of Macao was not on shore at the moment of the rescue, for reports concurred in representing him as a man who would have resisted to the last, in which case the *Mæander's* guns might perhaps have been turned upon the forts, and embroiled the matter still further. As it was, he displayed the utmost indignation and fury, proclaimed a public funeral for the deceased soldier, and invited to the ceremony the captain of an American frigate lying in the Roads.

The indignation of the Governor of Macao.

A public funeral proclaimed for the deceased soldier.

The incident relating to Captain Keppel's unceremonious rescue of Mr. Summers from the hands of the Governor of Macao had created considerable sensation in Lisbon, and copies of the Portuguese despatches were forwarded to the Ambassador in London with instructions to lay them before Lord Palmerston, and to request that the English Government should give such satisfaction and explanation as it might require for itself in a similar case. The Portuguese Government appeared to concur in the version which the Hongkong papers had given of the occurrence at Macao, and the people of Lisbon seemed to have condemned the Governor of Macao for detaining Mr. Summers beyond the time necessary to protect him from any disturbance in the crowd, quite as much as British residents in Portugal disapproved of that gentleman's attending a religious ceremony which he was not prepared to treat with the outward show of respect usual at all processions of *Corpus Christi* in Catholic countries.

The Portuguese Government request ambassador in London to ask for satisfaction.

The Portuguese condemned Governor of Macao's action in detaining Mr. Summers.

British residents in Portugal disapproved of Mr. Summers' conduct.

A Council of State held by the Queen of Portugal in November unanimously voted Lord Palmerston's despatch to be unsatisfactory, and a further note was sent by Viscount Moncoroo, Minister of Foreign Affairs, which was said to have aggravated the indifferent terms upon which Lord Palmerston and the Portuguese Ambassador were said to have been. The Portuguese appeared very sensitive upon the point, and complained that His Lordship had treated them with illiberality and chicane "in his endeavour to establish the English Government's jurisdiction over its own subjects in Macao by virtue of the treaty of peace with China," when, they contended, no such pretension had existed before that treaty, and that it ought not now, in the absence of express stipulation, to be held to alter a fact pre-

Lord Palmerston's despatch deemed unsatisfactory by Portugal.

The Portuguese sensitive over Lord Palmerston's endeavour to establish the right of jurisdiction of the English Government over British subjects

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Speech of the Queen of Portugal in opening Parliament.

The Queen of Portugal, in opening Parliament in January following, thus alluded to the matter in her speech :—

"I grieve to announce to you that our establishment at Macao has been the scene of two attempts against the sovereignty of my Crown and the law of nations, and my Government has already taken the necessary steps to secure the integrity of the establishment, the sovereignty of the Crown, and the dignity of the national decorum ; it has likewise claimed the satisfaction due, which, I trust, will meet with attention and lead to a just reparation."

Contradictory versions as to the nature of the 'satisfaction' given to Portugal.

The records of the time unfortunately contain contradictory versions as to what really was the nature of the "satisfaction" eventually given to Portugal. At first it was asserted that Her Majesty's Government fully approved of Captain Keppel's conduct, and that there the matter had ended, though it would appear that the later reports contained a correct statement of the facts, and that Lord Palmerston with great reluctance had acceded to—first, that an apology be made to Portugal for the wrongful invasion of her dominions ; second, that Captain Keppel be reprimanded for having caused it ; and third, that the widow of the Portuguese soldier who was slain on the occasion be granted a pension of £20 a year ; to the three wounded soldiers, $500 each, and to the daughter of the gaoler £50, and thus ended this unfortunate episode.*

The satisfaction given by England.

The foolish lad Summers.

For the foolish lad Summers, whose childish obstinacy or idiotic bigotry led to these untoward events and the death of a fellow-creature, it is almost to be regretted, even at this period, that a due regard for the credit of the nation to which he belonged did not allow of his being left to suffer a little martyrdom. As it is, after his release he was brought over from Macao in H. M. S. *Columbine*, doubtless laughing in his sleeve at the slip he had given the Macao authorities and thoughtless of the consequences.†

His return to Hongkong.

Death of Collins, the Gaoler.

On the 7th June the Gaoler of Hongkong, Mr. James Collins, died. He had held the position for upwards of seven years, so that he must have been appointed to the office not very long after the cession of the island.

Mr. N. D'E. Parker, solicitor, and 29

An inexplicable performance occurred about this time, in which Mr. Norcott D'Esterre Parker, the solicitor,—Crown Prosecutor after Mr. Sterling's departure on leave of absence,‡ and after Mr.

* Captain Keppel afterwards published an account of the affair which is to be found in "*A Visit to the Indian Archipelago in H. M. S. Maander.*"—London, 1853. The widow of the soldier, Barrache, died in Hongkong, on the 12th October, 1858, until which time she had continued receiving her pension from the Superintendency of Trade.

Campbell had temporarily succeeded Chief Justice Hulme,* and who for a time was Coroner as well,—† upon the shortest notice acted a part entirely out of his line of business and in which it was not surprising he made so signal a failure as led one to believe that he would not attempt the same character again.



Chinese arraigned for piracy.

The case, which ended in Mr. Parker, in company with twenty-nine Chinese, being arraigned in the Police Court on a charge of piracy on the 27th June, it appears, originated as follows. It seems Mr. Parker got some information through one Lee Kip Tye that at an island a few miles distant between Hongkong and Macao, Paong Chow by name, a boat was at anchor, having on board several articles taken from the wreck of some ship. Mr. Parker hired one of the port boats, in which he went off with Lee Kip Tye, guided by his informant. When he arrived at the place, the boat he was in search of was lying on the beach having her bottom scraped and cleaned. He went on shore and applied to the petty mandarin (believed to be of equal rank to a sergeant) who accompanied him to the junk, which he searched all over, the crew, by direction of the mandarin, opening their boxes and allowing the contents to be examined. Meanwhile an immense crowd of boatmen, some five hundred, began to collect, and they, as soon as the informer appeared, set upon him and began to beat him, though they did not molest Mr. Parker or Lee Kip Tye, who had taken refuge in the mandarin's house. The tepo and two of the boatmen then came to Hongkong and lodged a complaint to the effect that an Englishman and two Chinese had come to their village in a large boat and boarded a junk in which they had broken open several boxes, but this latter part was denied by the witnesses—the tepo and boatmen—when examined before Mr. Hillier, the Chief Magistrate, the men saying that they had opened the boxes themselves by order of the mandarin. The case was dismissed, but the whole story, especially with the additions and exaggerations it received, was not entirely creditable to Mr. Parker. Mr. Caldwell, the Assistant Superintendent of Police, gave an account of what he saw when he went over to the place in the Police boat, and of finding Mr. Parker in the mandarin's house, not a prisoner, but a refugee!—the latter's explanation being that, "having been told that a vessel was lying at Paong Chow having on board some articles taken from a vessel that had been wrecked, and having nothing to do, he had endeavoured to discover by the mark or name, what vessel it was from which it had been taken or picked up." Naturally the affair created a good deal of sensation and different versions were afloat to Mr. Parker's disad-

The facts.

The case is dismissed.

Facts not creditable to Mr. Parker.

Affair created a sensation.

* *Antè* Chap. VIII. § I., p. 168.

† See *antè* Chap. III. § III., p. 114, and Chap. X., p. 213.

Chap. XI. 1849.

vantage. From the evidence of the Chinese official examined at the inquiry, it would appear that Mr. Parker did not apply to him or to the mandarin; on the contrary, that information of what had taken place, was brought to him by the crew of the boat, and that on going down to the shore he found Mr. Parker, Lee Kip Tye, and a Chinaman wearing spectacles, on board the boat searching the boxes. Altogether, says the report, the affair had an ugly aspect, and although the Chief Magistrate was not blamed for having dismissed it, still it was an additional proof of the urgent necessity for the presence of Justices of the Peace in the Police Court from which they were unjustly excluded for Executive Magistrates. Mr. Parker afterwards, in a letter to the local journal which had qualified the affair as having "an ugly aspect," endeavoured to explain away his conduct, and there the matter ended.

Affair had an ugly aspect.

Constitution of Police Court criticized.

Mr. Parker explains.

Mr. William D'Esterre Parker, an attorney of Her Majesty's Court of Exchequer in Ireland, and brother of the solicitor referred to above, was admitted an attorney of the Supreme Court of the Colony on the 2nd July, 1849. He had left Ireland in January, 1849, and arrived in Hongkong on the 10th June.

Mr. Wm. D'E. Parker admitted a solicitor.

On the 4th July, under instructions from the Home Government, the Governor directed that all soldiers sentenced to transportation under the Mutiny Act should be sent to the Cape of Good Hope* or Van Diemen's Land, according to convenience of passages.

Convict soldiers transported to Cape of Good Hope or Van Diemen's Land.

The July Criminal Sessions of the Supreme Court opened on the 16th July, the cases being of the usual character, one of them being that of the Crown against Moggle-John, who combined his calling of a Police Constable with the less honourable one of 'hangman.' Being convicted of theft from a dwelling-house, he was sentenced to ten years' imprisonment—another instance of the constitution of the Police Force in those days.

July Criminal Sessions. Conviction of Moggle-John, Police Constable and Hangman, for larceny.

By proclamation dated the 26th July, it was announced that the Petty Sessions Ordinance No. 1 of 1849 had been approved and confirmed by the Home Government. This was the first Ordinance of which the draft had been submitted to the public before being passed by the Legislative Council,† and many suggestions were made for its amendment to which due weight seemed to have been given by the Governor. At all events, there can be no doubt that the Ordinance as ultimately passed, though not free from objections, underwent great improvements after its first appearance.

Petty Sessions Ordinance No. 1 of 1849 confirmed.

The first Ordinance of which draft submitted to the public.

On Monday, the 30th July, in the case of Alexander Robertson *v.* McSwyney, and Cum Cheong *v.* McSwyney, on motion before

Robertson *v.* McSwyney.

* See *antè* p. 226 n., and references there given.

† See *antè* p. 224.

the Chief Justice in Chambers, the defendant in person applied to set aside the writ of *Capias ad Respondendum* issued in the said causes, on the ground principally of his being a "merchant," having a permanent residence in Macao and therefore living within the jurisdiction of the Supreme Court of Hongkong. His Lordship held that Macao was *not* within the jurisdiction of the Court, and that the invariable practice of the Court treated it as such. He therefore dismissed the motion with costs

Cum Cheong v. McSwyney. Chief Justice Hulme holds Macao not within jurisdiction of Hongkong.

In reference to Macao, Mr. McSwyney had now afforded an opportunity, to the Supreme Court at all events, for pronouncing a judgment on a point which had for so long been in controversy. The reparation made to Portugal by the Home Government in connexion with Mr. Summers' case before mentioned further went in support of the correctness of the Chief Justice's decision.*

Macao again.

On the 1st August, 1849, at the close of the Sessions of Parliament, the Act 12 and 13 Vict., c. 96, "to provide for the prosecution and trial in Her Majesty's Colonies of offences committed within the jurisdiction of the Admiralty," was passed. This Act gave the ordinary Courts jurisdiction over offences hitherto only triable by Commissioners of the Court of Admiralty. It was promulgated in the Colony under Government Notification of the 7th February, 1850.

Act 12 and 13 Vict., c. 96.

On the evening of Saturday, the 3rd August, about six p.m., Mr. Carter, a merchant, hearing that Mr. Manuel Vicente Marques, another merchant, his debtor, was in difficulties, entered his premises and forcibly took possession of what remained of the goods he had previously sold to Mr. Marques. Mr. Carter was a Justice of the Peace, and therefore considered to be sufficiently aware of the consequences of his act. Though wrong, there were, however, circumstances connected with the transaction which, if they did not amount to a justification, went far towards the extenuation of an error, the extent of which, morally speaking, was forcibly recovering property which the owner had reason to believe he was fraudulently dispossessed of. Having thus acted and finding such a proceeding not legally correct, Mr. Carter had written afterwards to the trustees of the bankrupt's firm tendering back the goods, but this was declined for the time being, and Mr. Marques now proceeded against Mr. Carter by charging him with feloniously and forcibly stealing and taking away his property. It was considered hard that Mr. Carter should have been plundered of his goods by the now prosecutor, who had, moreover, realized some of them at a ruinous rate

Extraordinary conduct of Mr. Carter, a J.P., in reference to his debtor, Mr. Marques.

He takes forcible possession of goods.

Mr. Marques prosecutes Mr. Carter.

* *See* as to Consular Ordinance No. 1 of 1844 and Macao, *antè* Chap. I. p. 35, n.

Chap. XI. 1849.

without his further attempting to plunder him of his good name by entering a charge of felony against him. A warrant had been originally applied for but the Magistrate refused it, and a summons was granted with great difficulty. In the meantime application had been made to the Chief Justice for a *mandamus*, which the Court would have issued, had the summons not been granted. Upon the Bench with Mr. Hillier, there sat, out of mere curiosity probably and with a view to watching the proceedings,—for the case was not a Petty Sessions one,—the following Justices of the Peace, viz., Messrs. Arch. Campbell, Neave, Dudgeon, and Lyall. The defendant was discharged, the Magistrate holding there was not the slightest ground for the charge, and that it did the parties who had brought it forward no credit; and a creditable judgment this was for Mr. Hillier, for now at least he had given a fair and just decision, and, as was believed, the result of his own unguided mind. So much importance was attached to this case that the opinion of eminent counsel was afterwards taken at Home upon the whole facts, counsel agreeing at all events that the determination of the Magistrate was in substance correct and well founded in law.

Defendant discharged.

Mr. Hillier's decision correct.

Opinion of eminent counsel taken at Home.

Sessions of the Vice-Admiralty Court.

First appearance of Major Caine on the Bench since reinstatement of Chief Justice.

A Sessions of the Vice-Admiralty Court was held on Friday, the 10th August. The Commissioners present were the Chief Justice, Major Caine, the Colonial Secretary, and Captain Ironbridge, of H.M.S. *Amazon*. A fact worth recording is that this was the first time that Major Caine had appeared in Court since the reinstatement of that worthy and distinguished man Chief Justice Hulme, whose suspension from the high office he held, he (Major Caine), as the unworthy tool of Sir John Davis, had helped in bringing about. The records are entirely silent upon that fact, but it is as well that in the annals of the judicial history of this Colony this remarkable fact should now be recorded. Let bygones be bygones, doubtless thought Mr. Hulme, but, in his heart of hearts, Major Caine must have repented of the grievous injury he had caused to an innocent man and a gentleman, merely to satisfy the passion of a revengeful man.

The injury Major Caine had done to the Chief Justice.

The cases tried.

There were six cases upon the list; the first was against eight Manila seamen of the barque *Sir Edward Ryan* for mutiny. They were sentenced to two years' imprisonment. The second case was that of two Chinamen indicted for attacking and robbing a junk in the Capsingmoon passage. The first prisoner having been previously convicted was transported for life, and the other for fifteen years. On Saturday, the 10th, and Tuesday, the 13th, the Court was engaged exclusively with the case of Captain Langley, master of the *Sea Gull*, charged with shooting at his crew on the passage from Amoy to this

Case of Captain

port. The prisoner was tried on two indictments, a third was abandoned by the Attorney-General, being precisely similar to the first. Eventually, as the jury did not agree and there was no chance of unanimity, the prisoner was discharged with a word of caution from the Chief Justice.

Langley, of the *Sea Gulf*, for shooting at his crew.

At this Sessions, six prisoners sentenced to death for piracy, on commutation of their sentences, were transported for life.

Prisoners sentenced to death for piracy.

Mr. McSwyney, an insolvent debtor.

Mr. P. C. McSwyney, so often mentioned before in this work* and not later than July last when an important judgment was delivered on an often-contested point relating to the jurisdiction of the Supreme Court as to Macao, was brought up before the Court on the 14th September, as an insolvent debtor. Mr. Gaskell opposed his discharge on the part of Mr. J. Henley, master of a lorcha belonging to the insolvent, who claimed a large sum for advances and wages on account of the vessel. It may be mentioned that Mr. McSwyney was no longer an attorney of the Court, having long since been withheld permission to practise.† The insolvent put the party on the proofs of the account, which were most voluminous, but fortunately for Mr. Henley, he was prepared with vouchers for all payments, and made his claim good. Mr. N. D'E. Parker, on behalf of Mr. Robertson and Cum-Cheong, opposed the insolvent's discharge also, on the ground of suppression of property and a fraudulent schedule, and produced affidavits in support of his statement. Mr. Robertson had been detained in gaol for fourteen or fifteen months at the suit of the insolvent for an alleged bill of costs which was never due, and eventually was discharged by the Insolvent Court; while Cum-Cheong proved that eleven houses belonging to him, worth $4,000, had been sold at the suit of the insolvent for satisfaction of the same bill of costs for which Mr. Robertson had been in gaol. Both these parties had brought actions for damages against Mr. McSwyney.

His discharge opposed.

His atrocious conduct when a solicitor.

The Chief Justice, in passing judgment, animadverted strongly upon the disgraceful circumstances that had come to light, and expressed himself to the effect that the insolvent's schedule was a tissue of perjury, and he therefore remanded him for twelve months from the date of the vesting order, at the expiration of which period he was to amend his schedule.

The Chief Justice's animadversion thereon.

Insolvent's schedule a tissue of perjury.

Committed for twelve months.

The next thing found in connexion with Mr. McSwyney is the following notice:—

"Death. At the Seamen's Hospital, Victoria, on the 27th December, 1850, Mr. Percy Caulincourt McSwyney, sometime Deputy Registrar of the Supreme Court, Hongkong."

Mr. McSwyney's death and career set out.

* For previous references as to Mr. McSwyney, see *antè* Chap. III. § II., p. 82; Chap. III. § III., p. 97; *id.* pp. 109, 110, 114; Chap. X., p. 212; also *antè* p. 250, 251, *ubi suprà*.

† See List of Proctors, Attorneys, etc.—App., *infrà*.

Chap. XI. 1848.

A noteworthy incident in regard to this notice is, that it only gives the official position which Mr. McSwyney held before his severance from the public service some years before, and which he apparently had held without any stain on his character, although the biography mentioned hereunder, reciting facts already recorded in reference to Mr. McSwyney, would appear to denote otherwise.*

**The Police and its constitution.**

Dissatisfaction was expressed at this time at the constitution of the Police Force, and suggestions were thrown out for the formation of a good detective force instead of a preventive one. The Force, it would appear, consisted of almost every element and colour—English, French, Spanish, Portuguese, Malay, Bengali, and Chinese, and of these, except the Chinese, of course, and

* According to one of Mr. McSwyney's petitions on record, dated the 30th October, 1845, for admission to practise as an attorney of the Court, it would appear that he had graduated at the University of Dublin and was originally intended for the Bar. He arrived in the Colony in July, 1843, and up to the opening of the Supreme Court on the 1st October, 1844, he was Chief Clerk in the only Court during that period. From the opening of the Supreme Court up to the period of his first being admitted as an attorney, on the 1st May, 1845, he had held the appointment of Deputy Registrar of the Supreme Court. The following is a biographical account of Mr. McSwyney as taken from the local records of the time :—

"This person was an immigrant from Sydney too. [This 'too' refers to the many adventurers who found their way to the Colony from Australia in the early days.]—From being clerk to Major Caine, when Police Magistrate, he got to be Deputy Registrar of the Court. Ejected from that situation because he *blundered* in some account, Judge Hulme admitted him to practise as a temporary attorney of the Court. (Barrister, Solicitor, and Attorney-at-law he signed himself.) The mischief this man did to the Colony in its earlier days is almost incalculable. In conjunction with other parties whose names we need not mention, swindling and barefaced robbery were perpetrated to an extent difficult to be conceived. At last McSwyney's career was brought to a close, for no respectable person would be seen within a hundred yards of his office. He had got a number of Chinese clients, however, and to finish *their* business, he managed to get several re-admissions, after being told he could be admitted no more. From lawyer he turned opium-dealer, and it is said, made quite a fortune at speculating. 'I have seen the wicked in great power,' says the Psalmist,—'and spreading himself like a green bay tree—yet he passed away, and lo he was not, I sought him but he could not be found.' And so for this man, (or rather we may say for those men). He who boasted that he believed neither in God nor devil, neither in heaven nor in hell, was soon to get a downfall. Just as he was about to proceed to Singapore to purchase drug, he was tapped on the shoulder by a party who by his villany, had been obliged to lie nearly two years in Victoria Gaol. On its being certified to Judge Hulme that McSwyney had, when practising, taken from the party (who got permission to serve his own writ) upwards of a thousand dollars in the way of costs to which he was not entitled, the Judge very properly granted a writ of *capias ad respondendum*. Once in custody, retainer upon retainer was lodged against him, and such was the contempt in which he was held by lawyers in the Colony, that not one would act in any way for him, nor would any one become his bail. During the first few months of his incarceration he is supposed to have managed to place what property he was possessed of, in such security that no one could obtain a clue to it (nor could he subsequently get it back) and then he endeavoured to take the benefit of the Insolvent Act. Proved guilty of swearing to a false schedule, he was remanded to Gaol for a year, from whence he came forth to commence again a career of pettifogging as agent in the Small Debt Court. There proved to have taken out summonses without instructions, and protested against by admitted attorneys of the Court, he was once more ejected. Deprived of the means of subsistence, and shunned by every one, he contracted a dysentery, and was forced to beg an admission into the hospital for destitute seamen and others, where he died without a friend, and received the funeral of a pauper. On his first arrival in this Colony in 1842 in conjunction with a clerk in the Commissariat who supplied the necessary funds, he started a newspaper called the '*Eastern Globe*'—its existence ran over six issues, and then he got permanent employment under Government. A graduate of the University of Dublin, he was a good classical scholar, and a man of undoubted ability. From the career which is here detailed what a lesson does it not read to young men now commencing life, proving that the greatest talents, the profoundest knowledge, are all as nothing when wanting in the great essential 'Proper Moral Principle.'"

the Macao Portuguese in the Force, none understood a word of the prevailing tongue. Native Chinese had been found so corrupt, that it was considered advisable to discontinue employing them. The system as in vogue was thought highly objectionable, and utterly unsuitable to the requirements of the place and detrimental to the interests of the Colony. When a man was apprehended, in many cases presumably innocent, he was marched off to the Police Station where his detainers could not tell him either the reason for his arrest or for his detention, there being no interpreter present, and he was locked up "after the Constable had stripped him of all his property." The next day or two days after, this man was taken before the Magistrate and after close inquiry, nothing being proved against him, he was released only to return to his countrymen to tell them of the treatment he had received, to the grave injury of the Colony. No man should be deprived of his liberty, even for an hour, without some real ground for it, and a good detective force arresting not on mere suspicion alone but after careful inquiry, it was thought, would have answered better than the then system. The Police, however, were not alone to blame for this state of things—the 'Branding' and 'Registration' Ordinances (Nos. 1 and 12 of 1845, and 7 of 1846) had caused much alarm, and the Chinese were as much frightened at what was intended to be done as at what had been done. The Registration Ordinance, though in abeyance, was still retained in the Statute Book. It had been urged in favour of the law that the Chinese had a similar system in vogue in their own country, but this meant nothing as they had shown their dislike to it, and it was consequently both the duty and in the interest of the Colony, as far as possible, to encourage the Chinese to settle in Hongkong and make them more at home than in their own country. As the saying goes, "if Mahomed cannot come to the mountain, let the mountain go to Mahomed," for, as we cannot get to the interior of China, we should endeavour to bring the interior of China to us. This, however, could only be done by exercising the greatest possible amount of levity and forbearance to the Chinese who visited or settled in the Colony, and, indeed, if Hongkong was to prosper at all, this seemed imperative.

The Chinese in the Force corrupt.

Treatment of persons arrested.

No interpreters.

Grave injury.

The liberty of the subject.

The 'Branding' and 'Registration' Ordinances (Nos. 1 and 12 of 1845, and 7 of 1846) dreaded by Chinese.

The Registration Ordinance in abeyance.

Forbearance to the Chinese.

On the 29th September, Mr. N. D'E. Parker, a gentleman whose name is now familiar to the reader, left by the ship *Amoy Packet* for California, Mr. William D'E. Parker, his brother, having on the 26th of the same month been appointed by the Governor, during the absence of the former, to act for him as Proctor in Admiralty during his absence. The wording of the notification alone disclosed the fact that the Government at least had attached no importance whatever to the untoward event mentioned last

Departure of Mr. N. D'E. Parker.

Chap. XI. 1849.

**Mr. N. D'E. Parker's death and career.**

June in connexion with Mr. N. D'E. Parker. It will be recollected that this gentleman had arrived here at the end of July, 1846, with a high reputation* which the Government did not fail on several occasions to appreciate, by employing him as occasions occurred, and it turned out now that the Colony was losing him altogether, for the unfortunate man was never heard of again. This seemed a pity, having regard to the scarcity of respectable practitioners in the Courts here at this time. The non-arrival of the *Amoy Packet* at her port of destination removed the last hope of her safety, and it was feared that all on board of her had perished in a heavy gale which the ship had encountered a few days after sailing. Probate of the will of the deceased was granted by the Court in December, 1850, and the petition relates the circumstances connected with his death.

**Departure on leave of Dr. Gutzlaff, the Government Chinese Secretary. His career.**

Dr. C. Gutzlaff, the Government Chinese Secretary, left on a visit to Europe on the 30th September, 1849, after an absence of twenty-three years. That long term he had passed in China or amongst the Chinese. Perhaps no foreigner of the age had more thoroughly identified himself with the people, their literature, religion, government, history, and social and domestic habits. For some years past the learned Doctor had been in the service of the British Government, and his name was associated with those of such distinguished men as Morrison and Thom, who were also his brother interpreters during the war. With Dr. Gutzlaff, Mrs. Sterling, the wife of the Attorney-General, also left the Colony.

**Morrison and Thom.**

**Mrs. Sterling goes Home.**

**Chief Justice Hulme robbed of his gold snuff-box.**

On the night of the 2nd October, Mr. Hulme, the Chief Justice, missed his gold snuff box, of the value of five pounds sterling, from a chair in the verandah of his residence, and suspicion rested on his private watchman, a native of Mozambique; but, though inquiries were made, nothing could be proved against him until Tuesday, the 16th October, when the box was found in the possession of a Manila Constable, who stated he had purchased it for two mace (twenty-seven cents in present currency) from a China boy, that being the amount the lad gave to the thief for it. The boy having been apprehended was admitted as a witness, and the watchman and Constable were committed for trial at the December Sessions, when the case will be found further reported. Though the value would so denote it, the records are silent as to whether the snuff box in question was that presented to the Chief Justice, after his suspension, by the Attorneys of the Court and which Mr. Hulme said he would "treasure as an heirloom to be handed down to his children in refutation of the foul charges which had been preferred against him"—†in

**His private watchman and a Constable committed for trial.**

* See *antè* Chap. III. § III., p. 97, and also references at pp. 248, 249, *ubi supra*.
† *Antè* Chap. VIII. § I., p. 164.

which case he was doubly fortunate, and to be congratulated in having recovered it.

Handing over of Chinese suspects to the Chinese Authorities.

On two occasions recently, by a stretch of authority, Chinese prisoners against whom no charge could be made out before the Courts were handed over to their own authorities to be dealt with as these might see fit. First, there were the men captured by the steamer *Canton* at Tien-pak, who were at any rate as much pirates as those who were killed at the same place; but after undergoing a rigid examination before the Chief Magistrate, he found no cause for committing them for trial, and they must have been liberated but for the Governor's order that they should be sent to Canton. The next occasion occurred with the suspected pirates taken at Capsingmoon by the U. S. Ship *Plymouth* and, by the courtesy of Commodore Geisinger, handed over to Captain Hay, of the *Columbine*, who was sent by Captain Troubridge to receive them. Again no crime could be substantiated against these men, yet, on their discharge by the Magistrate, they were re-apprehended on a warrant from the Governor as Superintendent of Trade, by virtue of which the men and the property found in their possession were given up to the Chinese, who, after investigating the case, set the men at liberty and restored to them their property, though a complaint was formulated by one, a woman, that her property had dwindled down from the time it was taken from her. In the last case, communications had passed between the Plenipotentiaries regarding the prisoners, and the High Commissioner Su had assented to, if he did not actually demand, the surrender of the men, but, nevertheless, without denying that something may be said in favour of the expediency of such stretches of power, yet, as had all along been contended in similar cases before touched upon in this work, they were undeniably unconstitutional and of dangerous precedent.*

Unconstitutional stretches of power.

Lord Grey's reply to memorial of residents.

Earl Grey's reply to the memorial addressed to the Governor in January last,† together with an expression of the opinion of Her Majesty's Government on the general views and prayers of the memorialists, was now received, and made public on the 11th October. The memorial, and the petition to Parliament which attended it, embodied five distinct propositions:—

The propositions how dealt with.

First.—A reduction of the existing ground rents.

Second.—A reduction of the Colonial establishment to a level with the reduced revenue.

Third.—The establishment of a system of popular municipal government

Fourth.—*The simplification and cheapening of legal procedure.*

Fifth.—The improvement of our general commercial relations with China.

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* See *antè* Chap. III. § III., pp. 92, 93—also Vol. II., Chap. XLIX.

† *Antè* p. 223.

Chap. XI. — 1849.

The first of these propositions, Earl Grey negatived peremptorily; the second—His Lordship did not see any sufficient reason for altering the present mode of providing for the charge of the Colony; the third—he saw no general objection, but could not pronounce upon it until some distinct proposal was submitted; the fourth—which, taken in relation with this work, is of importance is quoted in full, and read as follows: "The confirmation of Ordinance No. 1 of 1849 (Petty Sessions Court) will, in some measure, meet that portion of the petition which is contained in the concluding paragraph. His Lordship will readily co-operate with the Governor in any well-considered measures which may have for their object the simplification of legal procedure; and whatever may be the objections to dispensing with some portions of the technical safeguards of the English law, His Lordship is satisfied that, in the present condition of the community of Hongkong, the evils which would arise from too close an adherence to its forms would be much more legitimate subjects of apprehension. With regard to the amount of fees exacted in the Supreme Court, His Lordship observed that those legally imposed were not exorbitant. The charges of legal practitioners were matters extremely difficult to regulate, particularly in case of a population at once litigious and ignorant of British law, like the Chinese. No better safeguard can be suggested than causing it to be matter of public notoriety, as far as possible, that all such charges as were liable to taxation would be inexpensively and rigorously executed;" and, as to the last proposition, Her Majesty's Government attached great importance to the object and desired to promote it by all means in their power.

Reduction of ground rents negatived.

The reduction of colonial expenditure.

Popular Municipal Government.

The simplification, etc., of legal procedure.

Ordinance No. 1 of 1849.

Safeguards of English law.

Fees in the Supreme Court not exorbitant.

The charges of legal practitioners.

Commercial relations with China.

Bounty-money.

On the 18th October, Mr. Sterling, as Advocate-General, moved the Vice-Admiralty Court, on behalf of Captains Troubridge, Hay, and Lockyer, of H.M.S. *Amazon*, *Columbine*, and *Medea*, and T. Jamieson, master of the ship *Canton*, for an interlocutory decree for bounty-money, which was duly made.

October Criminal Sessions.

At the Criminal Sessions of the Court, on the 22nd October, there was but a short calendar, none of the cases calling for special notice.

Ordinance No. 3 of 1849, extending summary jurisdiction of the Supreme Court, confirmed.

The Ordinance No. 3 of 1849 extending the Summary Jurisdiction of the Supreme Court, as was announced on the 27th October, had been confirmed. The Ordinance had now been in operation for several months and in its working had given general satisfaction. To the Chinese it was especially satisfactory, for they could not understand the old-fashioned forms of the Civil Court with the consequent tedious

General

instances they had been fleeced by attorneys who exacted enormous bills without having had them taxed. Were the Summary Jurisdiction extended, it was thought, to an unlimited amount in actions for debt, it would have the very best effect, giving either plaintiff or defendant the privilege of demanding a jury and of employing an attorney or not as he saw fit.

Death of Rear-Admiral Sir Francis Collier while staying with the Chief Justice.

Rear-Admiral Sir Francis Collier, C.B., K.C.H., Commander-in-Chief in the East Indies, died suddenly of apoplexy on the 28th October, at the residence of Chief Justice Hulme, with whom he was staying on a visit. He died in the presence of his medical attendants, who had been with him the greater part of the night. The Admiral, who was sixty-three years of age, had been in very bad health for some time, and his physicians entertained scarcely any hope of his permanent recovery, but as he was sufficiently well, on the evening before his death, to take a carriage drive with Mr. Hulme, his friends were quite unprepared for the sudden announcement of his death. It was only on the 22nd October that the Admiral had received a complimentary address from the merchants of Hongkong on the energy displayed by him in the extirpation of piracy in these seas and the security thereby afforded to the peaceful prosecution of commerce. His funeral took place on the 29th October.

Convicts transported to Penang.

On the 1st November, the Government advertized for a passage to Penang for one Indian and sixteen Chinese convicts.

The Navy and the suppression of piracy.

The past month was marked by an unusual activity on the part of our ships of war in the suppression of piracy in these waters. Apart from a previous encounter with H.M.S. *Medea*, when the latter destroyed five boats, the pirates were further encountered in considerable force within fifty miles of Hongkong alternately by H.M.S. *Columbine* and *Fury*, with the usual result where discipline and skill are pitted against untaught animal courage. The vessels named dealt destruction at a distance beyond the pirates' range, who were utterly routed, their boats being burnt, and their establishments on shore demolished. Hundreds were slaughtered, but, according to the official report, four-fifths escaped with their lives, and none were taken prisoners. The pirate band on the occasion was under the command of Chui Apo, whose name is familiar to the reader from the part he played at Wong-ma-kok when Captain Da Costa and Lieutenant Dwyer were killed in February this year.* Among his own countrymen, however, he had become notorious long before that event, and, as a bucanier, was a marked man by the Chinese authorities. His character and the fact of his being outlawed by his own Government were known locally long before the

The pirate Chui Apo and the murder of Captain Da Costa and Lieutenant Dwyer.

Chui Apo's influence.

* *Antè* pp. 228, 229.

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tragedy of Wong-ma-kok, but so far from a check being kept upon him, he, or one of his gang for him, actually obtained a licence for manufacturing gunpowder within the Colony, it being notorious that such powder was chiefly made for the use of pirates. He was supposed to have been in command of a detachment of Shap Ng Tsai's large fleet, that chief himself being in the south with the main force. As a price had been set upon the head of Chui Apo by the Government, an ineffectual attempt was made to take him alive, but he was reported to have been severely wounded, although this was afterwards denied by a deserter from the Ceylon Rifles who professed to be cognizant of Chui Apo's movements. In the correspondence of the British Plenipotentiary with the Chinese Viceroy, the capture of this outlaw was put forward as one of the main reasons for undertaking and continuing the expeditions, in the course of which the Viceroy was further told that "if accidents should happen through ignorance on our part, the blame must attach to the Chinese Viceroy for not having earlier caused the miscreant to be apprehended,"—an utterance which, it was doubtless conceived, would secure the object in view.

Chui Apo in command of a fleet. Ineffectual attempt to capture him.

British Plenipotentiary asserts capture of Chui Apo main reason for continuing expedition.

The handing over of Chinese suspects to their own Government—a subject several times dwelt upon in this work*—now engaged the serious attention of the Executive, a draft Ordinance dealing with the rendition for trial to officers of their own country of Chinese subjects who had committed crimes and offences being under consideration. It seemed chiefly intended to meet the difficulty about surrendering Chinese prisoners against whom no charge could be made out before our own Courts, but who were supposed to be offenders against the laws of their own country. Two cases of this sort have already been referred to, in which the Governor sent, or offered to give up, to the Chinese authorities pirates or men suspected to be so, who, after undergoing examinations before the Magistrate must otherwise have been set at liberty.† From the first there was no doubt of the illegality of such a line of procedure, and the promulgation of the present draft Ordinance only confirmed the opinion already expressed upon the point. The enactment became law on the 20th March, 1850, being Ordinance No. 2 of that year.‡

The handing over of Chinese suspects to their Government engages attention of Executive.

The illegality of the procedure.

Ordinance No. 2 of 1850.

The unofficial Justices of the Peace convened by circular at the request of the Governor, "to take into consideration certain matters of importance to the interests of the Colony," met by appointment in the Council room of the Government Offices at noon, on Saturday, the 3rd November. The Governor opened the proceedings by stating that he had invited the Justices to

First admission of unofficial members to the Legislative Council.

* See *antè* Chap. III § III., pp. 92, 93.
† *Antè* p. 256.
‡ See Chap. XII., *infrà*, and Vol. II., Chap. XLIX.

meet him in order to communicate the contents of a despatch he had received last mail from Earl Grey sanctioning his proposal for the admission of two members of the civil community into the Legislative Council. He proceeded to say that the nomination rested with himself, but that he thought it better for the Justices to elect two of their own number,—an announcement which, considering the oft-repeated representations upon the point, was received with general satisfaction. He requested the Justices accordingly, at their perfect convenience, within the next month or six weeks, to return him the names of any two gentlemen whom they might consider as eligible for the office in question. At a meeting held on the 6th December, at the Club House, Messrs. David Jardine and Joseph Frost Edger were elected by a majority of votes as members of the Legislative Council. The Justices, however, did not think this a favourable opportunity to interfere with municipal management, and declined the Governor's offer, at the above-mentioned meeting, to go into the question. The names having been submitted to the Governor, the latter on the 17th December informed the Justices that he would submit them to the Secretary of State "as gentlemen in his estimation in every way qualified for seats in the Legislative Council of this Colony." From this it appeared that the non-official members were not to take their seats until the formality of submitting their names to Earl Grey had been complied with. It was one of the misfortunes of this Colony that, from the earliest days, the Executive had been ingenious in inventing pretexts by which established customs might be departed from. The appointment of members of Council from the community was no new matter, and a precedent as to the manner of nomination and confirmation was not to be established. The names of all nominees were reported to the Secretary of State for the Colonies who invariably approved of them, but in the meantime they took their seats at the Council table. Such at any rate had been the rule in Hongkong with regard to official members, and why the rule should have been departed from in the persons of the two gentlemen, in the estimation of the Governor "in every way qualified for seats in the Legislative Council of the Colony," required some explanation. Lord Grey's despatch directing the admission of the new members to be chosen from the civil community was received on the 11th September. Had that despatch been acted upon with the usual celerity, these members could have been selected and have taken their seats by the 1st October. But this was not agreeable apparently to the powers that be. The despatch was kept a profound secret for nearly two months. The new members, in place of being elected and sworn in on the 1st October, were deprived of their seats at the Council table until the 14th

Messrs. D. Jardine and J. F. Edger elected by the Justices of the Peace.

Municipal question not gone into.

The Governor submits the names to the Secretary of State for approval.

The necessity for this questioned.

Lord Grey's approval.

The despatch kept secret.

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June, 1850, when their appointment was duly gazetted, and will be found referred to at that time.

Prize-money.

On the 15th November, several interlocutory decrees for prize-money were pronounced by the Admiralty Court, which again sat on the 19th and 20th November. The Commissioners present on this occasion were the Chief Justice, Captain Morgan, of H.M.S. *Hastings*, and Mr. C. B. Hillier, the Chief Magistrate. The calendar was rather a heavy one in appearance, but from the absence of witnesses in four of the cases, the Grand Jury reduced the number to be tried to one-half, of which again half broke down from flaws in the indictments, in one of which, however, the dropped stitch was taken up and the trial allowed to proceed. This was the case of the two mates of the brig *Gallant* named Burke and Newton, charged with larceny on the high seas by opening a box of specie and abstracting therefrom 5,200 rupees or £500 After the evidence of several of the witnesses had been taken, the Chief Justice pointed out to the Queen's Advocate certain errors in the indictment, and after argument the Court ruled the indictment imperfect, and the Jury were directed by the Court to find a verdict of not guilty. The prisoners were then removed to enable the Queen's Advocate to prepare another indictment, but counsel for the prisoners consenting to the amendment of the original indictment, the prisoners pleaded not guilty, and in the result they were found guilty but were recommended to mercy. Burke was sentenced to fifteen years' transportation, and Newton to twelve months' hard labour. The latter made his escape from prison in May, 1850, when the matter will be found dealt with, while Burke received a free pardon on the 24th May, 1852, on the occasion of the Queen's Birthday, the acting Governor having been led to take a merciful view of the case through the imprisonment the man had already undergone.

Flaws in indictment. Escape of the guilty.

Burke and Newton, larceny on the high seas.

Their conviction.

The Queen *v.* Leaong Lao Tong. The prisoner, although guilty, escapes.

In the other case, that of the Queen *versus* Leaong Lao Tong for piracy, the miscreant got off through a flaw in the indictment. In the course of the examination of one of the witnesses, it was found that the ownership of the stolen property had been erroneously laid in the indictment, and after explanations from the Queen's Advocate and the Chief Magistrate, who was on the Bench as shown above, the Chief Justice decided that the flaw was fatal. The Queen's Advocate declined to file a new indictment, and the prisoner was suffered to escape, evidently very much to his own astonishment, for when told to leave the dock, he turned round with a look of despair, as if he considered his fate sealed, and stared from side to side to see which officer would seize him by the tail and lead him forth to condign punishment. And if report spoke true, this would have been richly deserved, for the man was said to be one of the most dangerous, as well as most

Charge wrongly laid.

The prisoner astonished at being discharged.

A dangerous and prosperous thief.

prosperous, thieves in the Colony. This pet pirate appears thus to have been rather astonished at first sight at the eccentric functions of a law which pronounced him "not guilty" of a crime which had only a moment before been thoroughly substantiated against him, and that too by the very man he had robbed and assaulted. His astonishment, however, must have speedily given way to an intense admiration, not unmixed with a spice of that eager curiosity with which a scientific mind for the first time views the functions of a novel and untried machine, and speculates on the means and adaptations by which the principle at work may be extended and improved. Governed, no doubt, by this speculative idea, the pirate was actually found on the second day of the Sessions standing in one of the door-ways of the Court within three yards of that dock, where he had stood only the day before, rigged out in a new suit, the probable proceeds of his crime and eagerly listening to and studying the process of a judicature which assuredly had claims the most profound on the innermost sympathies of his nature. The Assistant Superintendent of Police, Mr. Caldwell, on seeing the man, turned him out. Here was an intelligent Chinaman who was arraigned one day of a capital felony, and though the crime was brought fully home to him, he was acquitted. The next day he enters the same Court, and commences to study that law which, he no doubt felt, had in it inherently "something worth knowing" to gentlemen in his line of business. Surely, the least the administrators of that law could have done at the time was to encourage such an enlightened spirit of inquiry, by presenting the aspiring student with a copy of Warren's "Popular Introduction to Law Studies," or Blackstone's "Vinerian Lecture"!—another incident worthy of being enshrined amongst the "curiosities of legal literature" when they come to be written. These contingencies, however, were getting rather above the average—three-fourths of the cases sent by the Chief Magistrate for trial breaking down from flaws, discrepant evidence, and the absence of witnesses—a fact which could not but be too often adverted to, so long as no remedy was ever attempted. It might at least have served economists with an argument for reduced expenditure, seeing that although the Judicial Establishment, Police, and Gaols cost upwards of £21,000 per annum, or within £3,000 of the entire revenue of the Colony, such was the working of the present system that out of the very small proportion of crimes brought to light, one-half of the accused, after running the gauntlet of a vigilant Police, two sagacious Magistrates, and a learned Attorney-General, were suffered to escape through causes which, if not preventible, ought at least to have kept them out of Court alto-

He is found as a spectator in Court next day.

Comments upon local judicatory.

Carelessness in getting up cases. Cases breaking down through flaws.

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The working of our institutions a mockery of justice. English criminal law as regards Chinese offenders.

The working of our boasted institutions was looked upon even by the Chinese as a mockery of justice, and, instead of checking crime, encouraged it by holding out so many chances for even the greatest villains to escape. English criminal law as administered to the Chinese people, with all its subtle and unnecessary distinctions, with all its "technical safeguards" and its foreign and unsuitable paraphernalia, is the fruitful mother of crime, a practical absurdity, and was often, at this period of the Colony especially, a mischievous abomination. And it was doubtless to meet the great evil complained of, arising probably in many instances through carelessness, that Ordinance No. 1 of 1850, giving power to the Supreme Court to amend an indictment or information in any matter of form or substance, was subsequently passed.

Ordinance No. 1 of 1850.

Successful suppression of piracy by the Navy. Squadron commanded by Chuf Apo destroyed.

The successful suppression of piracy in these waters was again a prominent theme of discussion at this time. As hereinbefore stated, H.M.S. *Columbine* and *Fury* had totally destroyed a formidable squadron of piratical junks commanded by the notorious outlaw Chui Apo, the murderer of Captain Da Costa and Lieutenant Dwyer, in February last. A second expedition, consisting of H.M.S. *Columbine*, H.M.S. *Fury*, and H. C. Steamer *Phlegethon*, with a reinforcement of officers and men from H.M.S. *Hastings*, had started on the 8th October for the south-west coast in search of Shap Ng Tsai, the great pirate chief before referred to,* and the scourge of that seaboard for the last two years. The ships returned on the 1st December, after tracking the pirate fleet through a most intricate and dangerous navigation down to the coast of Cochin China, falling in with them in the Gulf of Tonquin, and totally destroying the most formidable squadron ever known in these seas. No less than fifty-eight heavily-armed junks out of sixty-four which composed the whole pirate force were burnt and destroyed, upwards of 1,000 guns were taken or sunk, 1,700 pirates killed in action, and 1,000 or more driven on shore into the swamps of the Gulf of Tonquin where they must have inevitably perished of starvation or by the spears of the natives, whose coast they had so long ravaged with impunity. Now that the most powerful confederacy ever known in these waters had been annihilated, it will probably never be discovered upon what purposes it was bent when thus providentially encountered and destroyed. One thing was beyond all doubt, that the Chinese Commissioner Su was negotiating for the services of this "southern squadron" at the very moment of its destruction for some secret and extraordinary service, but his hopes were now shattered in that direction.

The pirate fleet of Shap Ng Tsai destroyed in the Gulf of Tonquin.

The most formidable confederacy ever known annihilated.

Chinese Commissioner Su.

Mr. Tarrant asks

The unfortunate Mr. Tarrant against whom the charge of conspiracy to defame Major Caine, the Colonial Secretary, had

been abandoned, it will be remembered, at the Criminal Sessions of December,* 1847, still smarting under a sense of the great injustice which he considered he had been made a victim of, through his solicitor, Mr. Gaskell, on the 8th December, addressed the Governor, Mr. Bonham, informing him that, as his case had been dismissed in consequence of the absence of Lo In Tin,† Major Caine's compradore, and as Lo In Tin had since returned to Hongkong, and Mr. Tarrant had been informed that "Major Caine had stated to Mr. Bonham that Lo In Tin had been in the habit of extorting moneys in his name from the lessee of the Central Market," he "trusted that, as his client's character was at stake through the aspersions cast upon it by the Colonial Secretary, and which were not cleared up in consequence of the alleged absence of the individual referred to, that His Excellency would cause such proceedings to be adopted against the said Lo In Tin as to His Excellency in his discretion should seem fit." In reply, on the 10th December, the Governor caused Mr. Gaskell to be informed "that the prosecution entered against Mr. Tarrant by the late acting Attorney-General, having been withdrawn by that officer,‡ it was not His Excellency's intention to take any further steps in the matter," and that, moreover, Major Caine had never stated to the Governor "that in his opinion Lo In Tin had been in the habit of extorting moneys in his name from the lessee of the Central Market."

Chap. XI. 1849. Government to take steps consequent upon return of Major Caine's compradore.

The Governor's reply.

The December Criminal Sessions opened on Saturday, the 15th. There were seven cases down for trial, mostly relating to misappropriation of property. The Chief Justice having to appear as a witness on the part of the prosecution, in the first case, or rather being really the prosecutor, the second case on the list was proceeded with until the case in which the Chief Justice was interested was reached. The Chief Justice then retired from the Bench and unrobed, and the Honourable P. I. Sterling, the Attorney-General, proceeded to take His Lordship's place and to officiate as Judge of the Court, presumably having previously been appointed and sworn for the purpose, though the records are silent as to that fact. The case against Jozé Martinho and Dominicos Los Santos was then called, the former for stealing the gold snuff box, the property of the Honourable Mr. Hulme, the Chief Justice, and the latter for receiving the same knowing it to have been stolen. The prisoners, it will be remembered, had been committed for trial last October.§ The Honourable Mr. John Walter Hulme, having been sworn, deposed that on

December Criminal Sessions. Trial of Martinho and Los Santos for stealing the Chief Justice's snuff-box.

Mr. Sterling tries the case.

The evidence of Chief Justice Hulme.

* See *antè* Chap. VIII., p. 170.*

† Chap. VII., p. 150.

‡ This was a mistake. It was the Crown Prosecutor, Mr. Parker, who withdrew the prosecution against Mr. Tarrant. Mr. Campbell, who had instituted it when acting Attorney-General, was then acting Chief Justice, but he may have advised the Government upon the subject.—See *antè* p. 241, and Chap. VIII., p. 170.

§ *Antè* p. 256.

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the night of the 2nd or morning of the 3rd October last, after retiring to his bed-room, he missed the snuff box (in Court), returned to the verandah, where he had been sitting, thinking that he might have left it on the arm-chair, but it was not to be found. The prisoner, Martinho, came up to his house to do duty as watchman the night after the loss, but he was not aware whether he was doing duty there when the snuff box was lost. On conclusion of the evidence and after the summing up of the officiating Judge, the Jury returned a verdict of guilty on which the Honourable Mr. Sterling addressed Martinho to the effect that his offence was increased by his having stolen property which he was employed and which it was his duty to guard, but on the other hand the temptation was very strong, and he would therefore sentence him to eighteen months' imprisonment with hard labour. The same remark also applied to Los Santos, who was then attached to the Police, and whom he sentenced to twelve months' imprisonment with hard labour. Mr. Sterling then retired from the Bench, and His Lordship returned and presided at the discharge by proclamation of three Chinese against whom there was a paucity of evidence, and the Sessions closed.

Conviction and sentence.

Scale of Fees in proceedings before Justices of the Peace.

On the 26th December was published a new scale of fees to be taken in proceedings before Justices of the Peace.

Land. Committee appointed to report upon landed tenure.

In this year the tenure of the land of the Colony was again the subject of consideration, and a Committee, consisting of the Treasurer, the Surveyor-General, the Assistant Commissary-General, and two merchants, was appointed to report upon the question generally, and to represent individual cases in which the amount of rent paid seemed extravagant. Another subject offered to the Committee at this time for its consideration and opinion was, whether it would not be for the interest of the Colony to reserve, in all future land sales, a portion only of the price in the form of rental, the competition being made to turn upon the premium offered.

Historical sketch of first land sales.

While the Committee was sitting, an historical sketch of the first land sales in the Colony was furnished to *The China Mail* newspaper, and dedicated to the Committee. This sketch is published in *The China Mail* of the 20th December, 1849, as follows :—

"A gentleman, who is personally cognizant of the facts, has, at our request, furnished us with the following history of the first land sales in the Colony, which we beg to dedicate to the Committee now sitting on the subject :—

Hongkong as a Colony may be said to owe its existence to Mr. James Matheson ; but for that gentleman's enterprise, in all probability it would have been a mere military post, if its cession had even been included in the Treaty.

Only a few of the present residents will now recollect the events previous to the war in 1839-40. Business was conducted afloat, first at Hongkong,

and afterwards at Toonkoo Bay. No British firms resided at Canton; the goods of that season were either sold outside, or trans-shipped in neutral vessels, and the exchanges were effected at Canton by neutral agents.

The goods of the year 1840 were all landed at Macao, paying duties to the Portuguese. Part was sent to Canton by the inner passage, but the greater portion remained nearly the whole year, during the time the Canton river was blockaded, at a most serious expense for warehouse rent.

In 1841 Mr. Matheson, to avoid these expenses, resolved to land the cotton consigned to his house, at Hongkong. Accordingly, early in that year he sent from Macao materials for the erection of mat godowns, taking possession of the ground now occupied by the Commissariat Stores, which were built by him and were four feet above the ground at the time of the land sale on the 12th June of that year.*

There the whole of the cotton of the season was landed. The regular godowns were rapidly finished and general trade established, with what success may be seen by Mr. A. Matheson's evidence before the Committee of the House of Commons.†

At the land sale on the 12th June, the first lot sold was numbered 15 in the list: it was knocked down to the late Mr. Webster at £20, not only without opposition, but he was laughed at for giving so much. The next lot, No. 14, however, fetched £21, but afterwards lapsed to Government and was re-sold, and now pays £220. The sale then proceeded along the Queen's Road at advancing rates, which to a certain extent was owing to the less rugged character of the beach, to which in these days more importance was attached than now, and also to the more central situation. Lots 1 to 13 were sold in the following order:—

| LOTS. | SQUARE FEET. | KNOCKED DOWN TO | PRICE. £ | s. |
|---|---|---|---|---|
| 13-14 | 10,800 | W. & T. Gemmell & Co. | 52. | 10 |
| 12-13 | 10,600 | Holliday & Co. | 38. | 10 |
| 11-12 | 11,200 | H. Rustomjee. | 52. | 0 |
| 10-11 | 9,600 | „ | 52. | 0 |
| 9-10 | 8,400 | Reserved. | — | |
| 8- 9 | 8,100 | Dirom & Co. | 57. | 0 |
| 7- 8 | 7,500 | Pestonjee Cowasjee. | 50. | 0 |
| 6- 7 | 6,300 | Hooker & Lane. | 43. | 0 |
| 5- 6 | 5,400 | Dadabhoy Rustomjee. | 50. | 0 |
| 4- 5 | 6,900 | Dent & Co. | 65. | 10 |
| 3- 4 | 7,800 | „ | 64. | 0 |
| 2- 3 | 7,000 | Lindsay & Co. | 80. | 0 |
| 1- 2 | 6,700 | Gribble, Hughes & Co. | 89. | 0 |

The sale was now moved to the ground that had been cleared by Messrs. Jardine, Matheson & Co., and which was for the most part occupied by their temporary buildings; and it must be noticed, that the proximity of that firm gave an additional value to land in its vicinity. The first lot put up was No. 20, upon which, as already noticed, a house was already in progress. Mr. Matheson begged that this might not impede bidders, and offered at once £150 (the upset price being £10) at which it was knocked down. The two adjoining lots were, after some competition, knocked down to him also at £185 and £230. The remaining ones in that locality were sold at £160, £140, £150, and £111. Prices then began to fall, and the six lots between this spot and what is now called Spring Gardens, ranged from £25 to £67, and all of them except one afterwards lapsed to Government.

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* See Introduction, *antè* p. 8.

† Chap. VI., p. 131.

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The remaining locations were, after some competition, knocked down as under :—

| LOTS. | SQUARE FEET. | KNOCKED DOWN TO | PRICE. £ | s. |
|---|---|---|---|---|
| 40-41 | 6,000 | Macvicar & Co. | 75. | 0 |
| 41-42 | 9,700 | ,, | 95. | 0 |
| 42-43 | 11,500 | Fox, Rawson & Co. | 100. | 0 |
| 43-44 | 65,500 | Turner & Co. | 150. | 0 |
| 44-45 | — | Reserved. | — | |
| 45-46 | — | ,, | — | |
| 46-47 | 30,600 | Captain Larkins. | 265. | 0 |
| 47-48 | 35,000 | P. F. Robertson. | 250. | 0 |
| 49-50 | — | Not sold. | — | |
| 51 | — | Captain Morgan. | 205. | 0 |

The land mania in Hongkong at that period may be readily accounted for, having originated almost entirely, from the fear of responsibility on the part of Lord Saltoun, while Commander-in-Chief.

His Lordship would not take upon himself to erect suitable barracks and officers' quarters for the troops. A few wretched huts, built on shelves cut on the acclivity of a ridge at West Point, were called barracks, but were really pest-houses, and after causing the loss of many a gallant soldier of the 55th, were abandoned and razed to the ground. The army was thus left without Government buildings, and became dependent on those belonging to the community, all of which had been built for mercantile purposes ; and it was even proposed to quarter them compulsorily on the community. Major-General D'Aguilar was accommodated in the house that had been built for an inn, and had, in addition to an ordinary rent, to pay for the anticipated profits of the inn-keeper. The officers' quarters were established in the house of a merchant, at a high rent. The house on Marine Lot No. 55 was occupied in 1843-44 as a barrack at $400 a month, and that on Marine Lot No. 46 as an hospital at $300 a month. Various other houses were occupied at high rents by officers of the army and other officials. Most of the Ordnance and Commissariat Stores were received in merchants' warehouses. The house in D'Aguilar Street, which in 1844-45 was occupied by the Oriental Bank, paid a monthly rental of $200, and the warehouse adjoining (then used as a Court House) paid monthly $150,—the aggregate monthly rental of both houses being now sixty dollars.

Messrs. Thomas Ripley & Co. in 1844 paid for the house now occupied by Mr. Gaskell $250 a month, and it would appear to have answered their purpose at the time, for in July, 1844, they incurred the burden of £320. 16*s.* 10*d.* annual ground rent for a Marine Lot, upon which they built at the expense of £20,000, a house which they never occupied, and which was only let for the first time two months ago to the Peninsular and Oriental Steam Company, at a rental of £375 per annum.

The Imperial Commissioner Keying, during both his visits, was accommodated in the houses of merchants, and at a later period the warehouses of another merchant were converted by Government into a gaol, and paid an annual rental that would almost have served to build one. And to this must be added, that, at the time, the Opium Farm and Registration Ordinance had not been imposed on the Colony, which had a very respectable trade, and, according to the evidence of Mr. A. Matheson, an increasing one.

The demand for land in consequence was great, but Sir Henry Pottinger would grant none ; on the contrary, he issued an order (10th April, 1843),* virtually prohibiting the progress of buildings, so that even the allocations

* See Introduction, *antè* p. 27.

made by Mr. Johnston ceased to be available. A Land Committee, consisting of the two Land Officers, the Colonial Secretary, and Mr. Burgass, Sir Henry Pottinger's legal adviser, was appointed to investigate the claims of landholders, and point out to Government such plots of ground as they would recommend being resumed ; * but their proceedings were secret, arbitrary, and, as it has since turned out, partial in the extreme.† The leases were carefully kept out of sight till the last moment, when they were for the first time read as the conditions of the land sale of 22nd January, 1844.‡ Positively nothing could be more skilfully got up for the purpose of exciting competition than that land sale; Quirk, Gammon, and Snap could not have managed it better. A more decided case of mock auction was never recorded in a blue-book ; but there is one circumstance that has hitherto been unrecorded, that in no small degree influenced the high prices : A certain number of lots had been (as he deemed unfairly) cut off land in the possession of Mr. George T. Braine, who was present at the sale, and intimated his intention to re-purchase them on any terms, and to appeal the injustice with which he had been treated. This was no sooner said than these lots, although numbered about the middle of the sale, were at once put up, and he was safely bid against, till some of them, from £25 per 105 feet square, were knocked down to him at £34, £46, etc. This gave the grand impulse to the sale, as many present, among whom his judgment was deservedly highly esteemed, entertained an opinion that he thought the ground worth the sum he bid for it. Another characteristic of this sale was, that, with the exception of some of the outer lots, not one man in twenty could have left the room and pointed out the lot he had purchased.

The results of such management are greatly to be deplored, as they not only led Sir Henry Pottinger to indent for an establishment far beyond the requirements of the Colony, but made Government at Home create an office that was not indented for and is not wanted, at an annual expense of nearly £200; and there is good authority for stating that this office was created merely to get rid of the importunities of a troublesome hanger-on.

"It is rumoured that owing to the great scarcity of accommodation for the officers of Her Majesty's Army, the Government intend to have recourse to the system of billeting them upon the inhabitants." *The Friend of China*, January 13, 1844. It was believed that the intention was not confined to the officers only. (See evidence before the House of Commons, Blue Book No. 654 Question 1,943.)

"The Land Officer has further been authorized and instructed to summarily prevent the progress of all buildings on locations which may, in his opinion, encroach on the present, or any future line of roads or streets, and to oblige all persons to confine themselves to the exact dimensions of the lots which were originally allotted to them,"—Government Notification, 13th April, 1843, Article 3. §

3847.—Do you think that the auction was properly conducted?—My opinion is that it very nearly resembled a mock auction.

3848.—In what respect?—That parties who had no means of paying for it bid against those who really wanted the land, and those parties occupied the land while the others threw it up.—(W. Scott.)

3881.—Was any deposit required at the first sale, under Sir Henry Pottinger?—None.

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* See Introduction, *antè* p. 28.

† For the Committee's Report, see *antè* Chap. I., p. 36.

‡ Chap. I., pp. 36, 37.

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3882.—Acting under your instructions from the Governor, what reply would you have considered yourself justified in making to any person inquiring of you the penalty for not fulfilling the conditions of the sale at the first sale?—I should have replied, that there was no penalty specified for their not fulfilling the terms.

3883.—They could therefore have thrown up the lots, without any consequences to themselves?—Yes. (A. T. Gordon.)"

Year 1849, one of the most eventful since cession of the island, The expenditure of Hongkong.

The year 1849 from first to last, as is seen, proved one of the most eventful, in different points of view, from the time of the cession of the island, and amongst judicial affairs important points are chronicled. The expenditure of Hongkong had formed the subject of much comment in Parliament during the year. The island had within itself no greater resources than the rock of Gibraltar or the island of St. Helena. When taken possession of, it had a small population of Chinese fishermen who dried their nets upon its rocks and obtained a supply of fresh water from its springs. The revenue squeezed out of it by a Chinese mandarin, cunning in the art of taxation, was, it was believed, somewhere about £150 per annum. After eight years' occupation, the population under our rule, apart from the military, now consisted of 300 Europeans, some hundreds of Portuguese, natives of Macao and India, and a few Indians employed by the Police or as domestics; the Chinese population was rated at 15,000, and the revenue computed at £25,000, principally drawn from land rents and from a Police tax. The public meeting of January taken in connexion with the complaints about the fees of Court and the excessive charges of the attorneys which led to the belief that the Colony could well do without them, thereby giving at an early stage a bad name to an otherwise deserving and necessary class of professionals; the murder of Captain Da Costa and Lieutenant Dwyer of the military; the passing of the Petty Sessions Ordinance and of that increasing the Summary Jurisdiction of the Supreme Court; the Summers episode at Macao, nearly embroiling us with Portugal, but leading to our recognition of the sovereignty of Portugal over Macao, before the later treaties of the former with China; the election for the first time of non-official members to the Legislative Council; and, though last not least, the successful suppression of piracy in these seas by the splendid services of the British Navy, regarded in whatever light, whether as the cause of humanity or civilization and practically for the benefit of the whole world, as was also all along the British policy in opening up China, are most important elements in themselves which bear recapitulation.

The revenue.

The population.

Recapitulation.

Splendid services of the Navy.

# CHAPTER XII.

## 1850-1852.

## SECTION I.

## 1850.

**Rule of Court.—Service of process and fee payable on the summary jurisdiction side.—Cape Colonists disapprove of transportation to the Cape.—The Cape Anti-convict Association.—Local opinion.—Ordinance No. 1 of 1850 for the better administration of justice.—Power to amend informations; the testimony of certain witnesses made admissible.—Flaws in indictments.—Disregard for truth by Chinese witnesses.—The Chinese and the obligation of an oath.—Chinese system of morality.—Chinese oaths.—Amongst Christians.—The heathen.—Purport of the Ordinance.—Application of Mr. E. H. Pollard to be admitted an attorney of the Court.—Ordinance No. 6 of 1845, s. 11.—Mr. William D'E. Parker opposes the admission.—Mr. Pollard is admitted.—Act 12 and 13 Vict., c. 96.—February Criminal Sessions; conviction of Steele.—Mr. Moresby on application is permitted to defend him.—His escape from gaol.—The rendition of Chinese criminals.—Ordinance No. 2 of 1850.—Mr. Holdforth, Assistant Magistrate, goes on leave.—Mr. W. H. Mitchell acts in the different capacities.—Mr. Holdforth's dishonesty.—Mr. Holdforth as an adventurer from Sydney.—Mr. W. H. Mitchell as editor of *The Hongkong Register*.—His claims for Government employ criticized.—Mr. Holdforth and his auctioneer, Mr. Duddell. The barque *Louisa*. Grave suspicions of collusion.—Mr. Duddell admits buying the vessel.—Re-sale ordered by Chief Justice.—Mr. Holdforth had left the Colony.—His unenviable notoriety.—Custom of auctioneers bidding at their own sales.—Mr. Duddell is saddled with costs.—High price at the second auction of the vessel.—Mr. Holdforth's mal-practices reviewed.—Neglect of the authorities.—On resignation of Mr. Holdforth, Mr. Mitchell is confirmed.—Constitution of Police Force again discussed.—Poor wages.—Deaths among European Constabulary. Excessive drinking of bad liquor.—Manila men as Policemen.—Natives of Madras.—The Malay.—The author's experience of the Malay as a Policeman.—Mr. Tarrant's index to the Ordinances of Hongkong.—Dedicated to the Chief Justice.—Mr. Tarrant's case and his treatment.—He becomes proprietor and editor of *The Friend of China*.—Land. Report of Committee.—Inability of lessees to transfer a sub-division of their lots.—The report of the Committee.—*The China Mail* upon the subject.—The opinion of the Attorney-General, Mr. Sterling, upon the inability of Crown lessees to divide their lots in portions.—First Criminal Sessions after abolition of Vice-Admiralty Court.—Act 12 and 13 Vict, c. 96.—The jury saved considerable labour.—No Grand Jury.—Court held in large upper room for first time. The accommodation.—The Press reporters.—Pirates captured by H.M.S. *Reynard*. Three sentenced to death and nine transported.—First prosecution for perjury in Hongkong.—Opinion prevalent among Chinese that offence not punishable.—The testimony of Mr. Hillier.—Oath no oath at all.—How Chinese were sworn in Hongkong. The prisoner had been sworn by 'burning paper.'—Efficacy of such oath.—Origin of such oath.—Ceremony of cutting off a cock's head as part of an oath.—Refusal by the Court to depart from usual routine.—Oath by cutting off cock's head recorded.—Chief Justice's sentence.—Although first trial for perjury, not first offence.—The sentence.—Practice heretofore of not requiring witnesses to leave the Court.—Rule in Scotland.—Interpreter for Malay, Hindustani, and Portuguese advertized for.—Duties of Census and Registration Officer performed by Mr. May, Superintendent of Police. Governor leaves for northern consulates.—Major-General Staveley acts.—Cause of Mr. Bonham's tour.—Convicted pirates hanged at West Point.—Disgraceful scene at the execution.—The authorities blamed.—Old and rickety state of the gallows.—Prisoners pardoned on Queen's Birthday.—European convicts Steele and Newton escape.—They are re-captured dead drunk.—They and a fellow-prisoner, McIlroy, who had aided them, are committed for trial.—Zeal of the Police before the arrest of the escaped convicts.—A Police Sergeant shoots a Chinaman.—Verdict of accidental death.—Strictures of the Press.—Mr. Caldwell rewarded.—He is appointed interpreter to the Supreme and Chief Magistrate's Courts.—His income in the other positions.—On the representation of the Governor to Lord Grey, he is allowed head-money for suppression of piracy.—Mr. Caldwell's conduct in the past concerning Too Apo.—Comparison drawn between trial of civil cases in Hongkong and Singapore.—Commissioner of Court of Requests in Singapore not a professional.—Mr. Campbell alluded to as a 'beauty.'—Appointment of Messrs. Jardine and Edger as**

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members of the Legislative Council notified.—They are sworn in.—A seat in the Legislative Council as an honour.—Limited powers of the elected members.—Death of Mr. F. Smith, Deputy Registrar. His career.—Public liberality and sympathy to his family.—Office of Clerk of the Court and Deputy Registrar merged and conferred upon Mr. W. H. Alexander.—The time of the Registrar.—Establishment of the Supreme Court at this period.—July Criminal Sessions. Case of conspiracy to sell a girl for purposes of prostitution.—A man and woman convicted and sentenced.—They are found to be man and wife and are discharged, two being required to a conspiracy.—English Criminal Law unsuitable.—Chinese neither fathom our justice nor understand our law.—Legal flaws again commented upon. Police Magistrate and Mr. Sterling, Attorney-General, taken to task.—Trial of Steele, Newton, and McIlroy for prison-breaking.—Newton, an educated man.—Facilities for escape great.—Only 'went out' of prison for a spree on the Queen's Birthday.—Newton and Steele calculated on 'slipping in' as they had 'slipped out.'—The costly Gaol not so bad a place.—Sentence on the prisoners.—Ten Chinese sentenced to death.—Articles of evidence abstracted after trial.—The Attorney-General says he will speak to the Sheriff.—Indignant at the strictures passed upon him, Mr. Sterling requests a local journal to remove his name from list of subscribers.—Comments.—First recorded unpleasantness concerning Mr. Sterling.—Mr. Gaskell gazetted Proctor in Admiralty.—Hongkong in the House of Commons. The annual parliamentary vote discussed.—Salaries of Governor, Chief Justice, Attorney-General, and Chief Magistrate criticized.—Commutation of sentences of death passed on Chinese, to whom Chief Justice had held out no hope of mercy. Misplaced leniency of the Governor.—Example required to prevent Chinese from committing piracy and murder.—Comparison with our own countrymen.—Fresh facts justifying clemency.—Interference with the Court's decision the cause of friction with the Executive.—Passage for Chinese convicts to Penang.—Massacre on board French ship *Albert* by Chinese coolies.—Arrest of the coolies.—The investigation.—Lengthy detention in prison.—Admiral Austen succeeds Sir F. Collier.—October Criminal Sessions.—Pirates sentenced to death.—Case of Ed. Cousens and Ed. Neill, of the *Kelso*, for causing a revolt on board.—The sentence.—Mr. Caldwell takes leave.—Mr. Clifton acts as Assistant Superintendent of Police.—Chinese convicts shipped to Penang.—Governor Bonham knighted.—The installation.—December Criminal Sessions.—The jury object to the interpretation of Tong Achik, the Court Interpreter.—The Chief Justice says 'ground should be as open as the objection.'—Interpretation question, the repetition of an old complaint.—Tong Achik afterwards found unfit.—Order that interpreters not eligible for Consulships.—Scholars eschew the Canton dialect.—Governor Bonham's care as regards legislation.—Ordinance No. 5 of 1850.

## SECTION II.

## 1851.

Land. Despatch of Earl Grey in reply to Governor Bonham.—Ordinance No. 1 of 1851.—Depositions of absent witnesses read at trial.—Proposal of Justices of the Peace that Police Force be under control of a Municipal Committee.—Governor's offer.—Escape from gaol.—Departure of Lieutenant Pedder on leave. The Marine Magistrate's duties, how performed.—Chinese oaths.—"Cutting off a cock's head."—The first form of oath recorded.—Cock birds at a premium.—Considerable perquisite to Court keepers.—Capture of Chui Apo, the murderer of Captain Da Costa and Lieutenant Dwyer.—How capture effected. Chui Apo's statement.—Admitted being implicated in the murder.—He held office under the Canton Government.—Doubts as to legality of Chui Apo's capture.—Special Sessions for trial of Chui Apo.—The trial.—Mr. Gaskell's preliminary objection as to jurisdiction.—Chui Apo had been kidnapped.—The Chief Justice on the point.—Plea. Chui Apo stands mute.—Provocation.—The Chief Justice's charge to the jury.—Verdict of manslaughter.—Transportation for life.—After sentence Chui Apo inculpated the deceased officers.—He threatens suicide.—Preferred death to transportation.—Despite warnings to Gaol authorities he carries out his threat.—Found hanging in his cell.—*Felo de se*.—Verdict of manslaughter commented upon locally and in England.—The tablet in St. John's Cathedral.—Departure of Lady Bonham and Major-General Staveley.—Appointment of Major-General Jervois to succeed Major-General Staveley. His Secretary, Captain Maclean, R.A.—February Criminal Sessions.—The Chief Justice refuses to allow depositions of absent witnesses to be read under Ordinance No. 1 of 1851.—The Sessions adjourned.—Admission of Mr. J. Tarrant as an attorney of the Court.—Decision of Her Majesty's Consul at Canton against the master of the *Lady Mary Wood* upset.—Consular decisions reversed.—Civil appeals to the Supreme Court of Hongkong from Consular decisions.—Consular Ordinance No. 3 of 1847.—Governor Bonham leaves for Canton.—Wreck of the *Lord Stanley* with convicts on board.—Objection in the Straits Settlements to transportation thither.—Ordinance No. 2 of 1851 regulating the jurisdiction of the Supreme Court.—Arrival of Major-General Jervois.—April Criminal Sessions. Mr. W. T. Bridges admitted to the local Bar.—The Chief Justice's remarks.—The part Mr. Bridges afterwards played in the administration of local affairs.—An important point affecting the two branches of the profession. Mr. Bridges loses no time.—His objection to Mr. Gaskell appearing as counsel.—The Chief Justice. Practice of solicitors appearing as counsel stopped.—Phil-

lips, Moore & Co. *v.* Arnott.—Case exposed pernicious system of allowing unqualified persons to act as attorneys.—The Royal Asiatic Society holds meeting in Supreme Court building.—The Jury Ordinance, No. 4 of 1851.—Land. Secretary of State directs all Crown lands to be sold at public auction.—The Petty Jurors memorialize the Governor.—Parliamentary vote for Hongkong discussed in Parliament.—Mr. Clay, M.P., on the Chief Justiceship. —The Governor goes to Canton under instructions.—Illness of the Chief Justice. —Death of Dr. Gutzlaff. His career.—The fortune he left.—Ordinance No. 14 of 1845. Abatement of nuisances. An assault committed to obtain a judicial decision.—Clause in leases under which property held in the Colony.—Obnoxious trades.—Mr. Hillier's opinion upon application of clause 12 of section 2 of Ordinance No. 14 of 1845.—The evidence of the defendant who committed the assault.—Defendant fined.—Malay and Javanese law of homicide. Case of Selico, who murdered his wife.—Coroner's inquest. The jury find justification according to usage of Malays and Javanese.—At the October Criminal Sessions, he pleads guilty and is sentenced to death.—Departure of Mr. Hillier for Shanghai.—Ordinance No. 4 of 1851.—Ordinance No. 7 of 1845.—Ordinance No 4 of 1849.—The law of arrest and the manners and customs of the Chinese.—Chun Atee *v.* You Tsoi.—The defendant, a girl, pledged for debt due.—Chinese oaths.—Ordinance No. 9 of 1845, s. 1.—On plaintiff burning 'a bit of paper' in support of declaration, defendant committed to prison.—Defendant before Chief Justice denied 'pledging her body.'—Chinese custom warranting the transaction.—Cases *contra bonos mores* suggestive of Chinese character.—The noted Police Court interpreter Tong Achick.—Police Court interpreter advertized for.—October Criminal Sessions. The new Jury Ordinance No. 4 of 1851 brought into operation.—Several jurymen summoned from the same firm.—Case against Chinese Constables for extortion by laying brothels under contribution.—Extortion of long standing. The sentence.—Their confession. Case of Chow Sam Mooey for keeping a brothel. Governor remits sentence obtained on the testimony of the Constables.—The jury discharge another similar case.—Rider to their verdict.—Governor Bonham proceeds to Shanghai.—Illness of the Chief Justice.—Crowded state of Supreme Court hall.—Mr. Sterling acted for Chief Justice on the summary side of the Court.—Magic words attributed to Mr. Sterling.—A bill of costs for revision by the Court.—All the lawyers in attendance.—Complaint arose because previously no counsel in the Colony.—Fees allowed to counsel not considered sufficient.—Attorney-General of opinion that counsel coming to Hongkong, having no Government salary, ought to be well paid.—Matter remitted to Registrar.—Chinese oaths. Trial for perjury.—The jury and the unsatisfactory manner in which Chinese are sworn. The attitude of the Attorney-General.—A false witness pleads guilty of perjury.—Jury criticize mode of swearing Chinese.—The Chief Justice upon the practice.—The jury express their opinion.—A juryman upon "the cutting off of a cock's head."—Mode in vogue at this period. Paper burning.—Mr. Caldwell, the Chinese Interpreter, upon paper burning as an oath. The Chief Justice quotes an authority.—A juryman upon the point.—Various forms of oath in use amongst Chinese.—The evidence of Ching Kum Cheong upon the point.—The Attorney-General suggests a simple affirmation.—No oath in Chinese Courts.—The Attorney-General objects to a juryman on account of his views on the subject.—The Jury express a wish that point in dispute be fully decided.—The Chief Justice express thanks to jury for bringing matter forward.—Mode of swearing Chinese witnesses in early days disclosed.—January Criminal Sessions, 1852. The Chief Justice to the jury on the subject of Chinese oaths.—Correspondence thereon.—Mr. Caldwell upon the subject.—Further letter from Mr. Caldwell upon the subject of Chinese oaths.—No change and system in force adhered to.—Simple declaration introduced by Ordinance No. 2 of 1860.

## SECTION III.

## 1852.

Piratical lorchas in command of Europeans and Americans.—Government unwilling to acknowledge discreditable connexion.—The local authorities as regards the Macao Government.—Extensive piracies.—Horrible murder of a Portuguese naval officer.—The facts.—The Portuguese boat *Adamastor*.—A piratical boat flying the English flag commanded by an Englishman.—Wm. Fenton, the pirate.—Fenton arrested by Lieutenant Miranda, of the *Adamastor*. Lieutenant Miranda stabbed by the pirates.—His body thrown into the water. The fate of those who accompanied him.—The *Adamastor* fires on the pirates who sail away with Fenton.—Hand of Providence at hand.—Fenton continues his piracies.—His capture by Chinese and arrival in Hongkong.—Found not guilty of 'accessory to murder,' while several Chinese charged with piracy are sentenced to death.—Indignation of the Portuguese.—Fenton is arraigned on a charge of consorting with pirates.—Found guilty and convicted.—His confessions.—Conclusions.—Consular Ordinance No. 2 of 1852. Right of appeal to the Supreme Court from Consular decisions taken away.—Consular Ordinance No. 5 of 1844.—Consular Ordinance No. 2 of 1847.—Discretionary powers as to allowance of appeal.—Great dissatisfaction.—Inconvenience to the Court by public passing through the door-way nearest the Bench.—Notice board put up by order of Chief Justice limiting passage to professionals and a few others.—Order a standing one ever since.—

Table of Fees in the Vice-Admiralty Court,—February Criminal Sessions.—Regina v. Booray and Others. Murder of John Paterson, of the *Coreyra*, by Malay sailors.—Sentence of death recorded.—Extraordinary conduct of the Chief Justice.—As the Governor had interfered with a previous sentence of his, the prisoners were entitled to the same leniency. Public opinion.—Governor not altogether blameless.—Death of Booray in gaol.—Death of Admiral Austen.

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Rule of Court. Service of process and fee payable on the summary jurisdiction side.

On the 2nd January, 1850, the Legislative Council passed and approved of a Rule of Court relative to the service of process, and the fee to be paid therefor, on the summary side of the Court.

Cape Colonists disapprove of transportation to the Cape.

The Cape Anti-convict Association.

Local opinion.

The Cape Colonists had expressed disapproval of the transportation of convicts to their Colony,* ordered, as may be recollected, under instructions from Home in September, 1848, and repeated in February and July of last year. On the 10th January, the Cape Anti-convict Association resolved that the thanks of the Association were due to Captain Toby, of the *Frederick Huth*, for having declined to convey the convicts from Hongkong to the Cape, and to Mr. Billingsley, the owner, for having given him timely information as to the state of the public mind at the Cape. Now that the Cape Colonists had declined the honour of their company, people in Hongkong had some curiosity to learn the next place intended by Lord Grey as a receptacle for European convicts, evidently losing sight of the fact that the order of July above referred to authorized transportation either to the Cape "or Van Diemen's Land according to convenience of passages."†

Ordinance No. 1 of 1850 for the better administration of justice.

Power to amend informations; the testimony of certain witnesses made admissible.

A short, but in some respects important, Ordinance now came into force. It was that passed on the 15th January, 1850, No. 1 of that year, the object of which was to secure the better administration of justice and the improvement of the law of evidence in criminal cases. Power was now given to the Supreme Court to amend informations at trial, and the testimony of witnesses was not to be excluded by their incapacity from crime. Those who bestowed any attention upon trials in the Supreme Court, where Chinese appeared either in the dock or in the witness-box, could not have failed to be persuaded that something was required to be done in order to secure the ends of justice, not less in protecting the innocent than in convicting the guilty. The present Ordinance was intended to meet the defect; but the main provision was in reality nothing more than conferring a power upon the Judge to amend during the trial that which ought to have existed. Though it was notorious that at every Sessions a large proportion of the prisoners escaped through flaws in the indictments, it was also certain that this could not have happened had the indictment been drawn with anything like care. The Ordinance simplified proceedings by leaving the attain-

Flaws in indictments.

* On this subject see *antè* Chap. XI., p. 226, and references there given.

† See *antè* Chap. XI., p. 250.

ment of the end in view to the discretion of the Judge instead of loading indictments with a multiplicity of counts. Englishmen who were in the habit of attending the Courts could not fail to be struck with the disregard for truth at times exhibited by Chinese witnesses. It was not generally displayed in any vindictive feeling towards the accused, and rarely bore upon any very essential part of the evidence; still it had the effect of shaking the whole testimony, and sometimes operated favourably for the prisoner. In addition to the usual chapter of doubts, by which the prisoner was benefited, he thus had fresh chances from this defect in the national character. Justice took advantage of it no doubt, but it was desirable that it should not be frustrated by perversions of truth. Like other heathen the Chinese have very loose notions of the obligations of an oath, and in the ordinary affairs of life they tell an untruth without hesitation, nor are they ashamed if detected. The evil is a serious one, and one for which there is no certain cure. Their system of morality, which, in China, is religion, does not enforce upon them the importance of truth, and an oath sits very lightly upon the conscience of those who have no conception of the deity, and care very little for the future. Among all persons professing Christianity, truth is hedged in, guarded alike by the religious and the irreligious, but among the heathen it is cared little for,—to them it would be an inconvenient acquisition.

Disregard for truth by Chinese witnesses.

The Chinese, and the obligation of an oath.

Chinese system of morality. Chinese oaths.

Amongst Christians.

The heathen.

The Ordinance was, no doubt, intended to check the evils spoken of, and in a degree it would probably have the effect of putting justice in a better position for the prosecution, conviction, and punishment of criminals.

Purport of the Ordinance.

On the 23rd January, the Chief Justice sat in Court and heard an application from Mr. Edward H. Pollard to be admitted to practise as an attorney in terms of Ordinance No. 6 of 1845, section 11 of which authorized the Court to admit fit persons to practise for three months in case of "obvious necessity."* The motion was made by the Attorney-General, Mr. Sterling, but was opposed by Mr. William D'E. Parker, whose objections, after being duly considered, were deemed insufficient or invalid, and Mr. Pollard was accordingly admitted.† Mr. Pollard, it will be recollected, was appointed clerk to acting Chief Justice Campbell, on the resignation of Mr. Trotter, consequent upon the suspension of Chief Justice Hulme.‡ Mr. Pollard had subsequently appeared in the records as being under articles to Mr. Norcott D'E. Parker, whose office he had probably joined on the return to duty of Chief Justice Hulme.

Application of Mr. E. H. Pollard to be admitted attorney of the Court.

Ordinance No. 6 of 1845, s. 11.

Mr. William D'E. Parker opposes the admission.

Mr. Pollard is admitted.

* Reproduced in section 20 of Ordinance No. 12 of 1873. See also *ante* Chap. III. § II., p. 74.
† See List of Proctors, Attorneys, &c., App. *infra*.
‡ See *ante* Chap. VIII. § I., p. 171.

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Act 12 and 13 Vict., c. 96.

February Criminal Sessions: conviction of Steele.

Mr. Moresby, on application, is permited to defend him.

His escape from gaol.

The Act 12 and 13 Vict. c. 96, which provided for the prosecution and trial in Her Majesty's Colonies of offences committed within the jurisdiction of the Admiralty, was published in the Colony on the 7th February. The first Criminal Sessions of the year opened on the 15th February; most of the cases being of the ordinary class. One of them was against Thomas Steele, formerly in the Police Force, for stabbing. Mr. Parker had been engaged on behalf of the prisoner, but was too unwell to attend, and as there happened to be no other attorney present in Court, the prisoner, at the suggestion of the Chief Justice, allowed the case to go on. While the second witness was being examined, Mr. Moresby, recently arrived in the Colony, applied for permission to appear on behalf of the prisoner, which was at once granted. The prisoner was convicted and sentenced to twelve months' imprisonment with hard labour. It will be seen later on that, in May of this year, he escaped from prison.

The rendition of Chinese criminals.

Ordinance No. 2 of 1850.

On the 20th March, the Legislature passed an important enactment relative to the rendition of Chinese criminals. By the treaties between Great Britain and China, provision had been made for the rendition for trial to officers of their own country of such subjects of China as had committed crimes and offences against their own Government.* Ordinance No. 2 of 1850 was, therefore, passed "to provide for the more effective carrying out of the treaties between Great Britain and China in so far as related to Chinese subjects within the Colony of Hongkong."

Mr. Holdforth, Assistant Magistrate, goes on leave.

Mr. W. H. Mitchell acts in the different capacities.

Mr. Charles Gordon Holdforth, the Assistant Magistrate, proceeded on leave on sick certificate on the 1st April, Mr. W. H. Mitchell, Justice of the Peace, being gazetted to officiate as Assistant Police Magistrate and Sheriff, as well as Provost-Marshal, Coroner, and Marshal of the Vice-Admiralty Court, during the absence of Mr. Holdforth, whose first position in the Service was that of Coroner in October, 1845.† Mr. Holdforth's appointments as Assistant Magistrate and Sheriff had never been gazetted. At all events no successor had ever been gazetted to Mr. Hillier when confirmed as Chief Magistrate, so that Mr. Holdforth's different offices had always been considered to be acting ones‡ Many were the adverse criticisms passed occasionally upon this officer having especial reference to his dishonesty,§ but the records do not show that any notice was

Mr. Holdforth's dishonesty.

* See the question of handing over of Chinese to their own authorities by the local Government touched upon, *antè* Chap. III. § III., p. 92, and Chap. XI., pp. 257, 260.

† *Antè* Chap. III. § II., p. 89.

‡ See his appointment as *Deputy* Sheriff, *antè* Chap. III. § III., p. 92, and his appointment as acting Assistant Magistrate noticed, *antè* Chap. III. § III., p. 97, and Chap. V. § II., p. 130.

§ See *antè* Chap. VII., p. 150, and Chap. X., p. 209.

ever taken of the strictures passed on him. This circumstance may have given a stimulus to his efforts to turn his opportunities to the best account. In this he was understood to have been singularly successful, insomuch that his present "absence on sick certificate" had been long anticipated and was but the prelude to his final retirement, in the meanwhile enabling him to draw the emoluments of office till his leave was up. What arrangement he may have made with his successor was not known, nor, added a report in regard to current stories about him, had he communicated the secret by which a man "may live well and lay up an ample fortune in three years from two offices, the salary of the one being £500 and of the other £200." Before his appointment to these, Mr. Holdforth, who arrived here as an adventurer from Sydney, was a junior clerk on a small salary in the Chief Magistrate's Office at the time it was presided over by Major Caine, who had been the making of his protégé and enabled him to bear up against charges which, if not true, were certainly libellous, but which had neither been publicly contradicted nor investigated.

Mr. Holdforth as an adventurer from Sydney.

The appointment of Mr. Mitchell, the editor of *The Hongkong Register*, as Mr. Holdforth's successor, was also very strongly criticized, and afforded a very edifying commentary on the laudatory tone towards the Government, "its measures, and its men," which had been assumed by the paper in question under Mr. Mitchell's editorship, and which contrasted so strongly with the virtuous invectives against sycophancy and place-hunting which used to characterize him when he exhibited himself as an amateur writer. It was not known what other claims he had upon the Government, but it was certain that amongst its servants, individuals much better qualified could have been found and a considerable saving effected thereby.

Mr. W. H. Mitchell as editor of *The Hongkong Register*. His claims for Government employ criticized.

On the 5th April, the Chief Justice sitting in Admiralty heard the case of *Syme and others* against the barque *Louisa*, ordering the re-sale of the ship owing to the auctioneer, Mr. Duddell, "having committed an error by knocking the vessel down to himself." Mr. Duddell was the auctioneer employed by Mr. Holdforth, the Marshal, and his summary dismissal of the previous 'Sheriff's Auctioneer,' Mr. Markwick, in October, 1847, to employ Mr. Duddell, it will be remembered, formed the subject of public comment,* and the present case—one of a long line of similar ones,—gave rise to grave suspicions of collusion between the Sheriff and his auctioneer. At the hearing, Mr. Duddell admitted that the vessel had been knocked down to himself, on which ground, irrespective of all others, the Chief Justice ordered the re-sale of the ship. This case was unfavourably commented

Mr. Holdforth and the auctioneer. Mr. Duddell. The barque *Louisa*.

Grave suspicions of collusion. Mr. Duddell admits buying the vessel. Re-sale ordered by

* *Antè* Chap. VII., pp. 150, 151.

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upon in the press. From the report, the inference drawn was that there had been collusion between Mr. Holdforth and the auctioneer to let the vessel be knocked down to one or the other of them, or that the auctioneer knocked her down to himself at a price lower than what it was probable other parties would have given for her. Since the sitting of the Court, Mr. Holdforth had left the Colony, and whether he bid for the vessel in the way of buying her in as Marshal (which would have been illegal), or whether he bid for her as a matter of private speculation—either of which was blameable in his position—could not be ascertained. That individual had gained for himself an unenviable notoriety in the Colony, and his refusing to take notice of charges brought against him by the press which, if not true, were libellous to a degree, bore the charges out against him, at all events in the colouring given to the present case. In the result, however, the auctioneer had to pay the piper. Relying on the custom which had obtained of auctioneers bidding at their own sales, and imagining and declaring himself to be the bidder before the fall of the hammer, Mr. Duddell had saddled himself with smart money to the extent of $300, and repairs upon the vessel to the extent of $107, besides the law expenses upon the case which amounted to no trifle,—a lesson which he doubtless did not forget when next called upon to act as Auctioneer to the Marshal of the Vice-Admiralty Court. The vessel at the second auction fetched $1,750, *i.e.*, $400 above the sum she had previously been sold for! But Mr. Holdforth had now sailed away from the Colony on what he no doubt considered his "well-earned leave."

Mr. Holdforth had left the Colony.

His unenviable notoriety.

Custom of auctioneers bidding at their own sales.

Mr. Duddell is saddled with costs.

Higher price at the second auction of the vessel.

Although this was not the only one of his mal-practices that had come to light after his departure, yet the local authorities allowed him to remain on leave and draw pay for twelve months, although it was well known that he would never return to the Colony to face the charges which awaited him on his return. Major Caine, who was said to have been 'his friend and supporter,' and against whom some serious allegations were made at the time in reference to Holdforth's affairs, not unnaturally came in for a share of public blame. Mr Holdforth, it was alleged, had come to Hongkong having eluded justice in Australia for horse-stealing, and, on his departure on leave from the Colony for San Francisco, actually hid himself in the vessel in which he took his departure,* in dread of the Police being sent to arrest him. This

Mr. Holdforth's malpractices reviewed.

* This vessel was said to have been either partially or entirely laden by him. The records show that when in California he got into trouble over mercantile transactions. In one instance he was arrested on "an order founded on an affidavit of one Cumlong, that Holdforth had received certain goods, the property of Cumlong, shipped from China to California, and that he had sold the same and retained the proceeds." *Alta California*, 17th July, 1851.—*China Mail*, 30th October, 1851.

was another instance showing the neglect of the authorities in not thoroughly scrutinizing the characters of those persons asking for employment in the early days, and whose previous career had been spent in Australia. On Mr. Holdforth's 'resignation,' Mr. Mitchell was gazetted as confirmed in his place on the 8th July, 1851.

Neglect of the authorities. On resignation of Mr. Holdforth, Mr. Mitchell is confirmed.

The constitution of the Police Force again came under consideration, perhaps not unreasonably so. The 'stuff' of which it was composed was described as of the 'most wretched quality.' The poor wages they received were said to be greatly the cause of the complaints; for, with the wages offered, it was impossible to make the force an attractive one. The European Constable got only $15 a month, "very far below what the humblest in the Colony required," so that, in the case of steady men, they only accepted the position in the hope of something better turning up. But to this class, unfortunately, the chief objection was the readiness with which they yielded to the temptation offered by the many public houses about, and many of the deaths among the European Constabulary were ascribed to their excessive indulgence in ardent spirits, a great portion of which, sold by the low tavern-keepers, was of the most abominable and deleterious description. Manila-men were not considered suitable for many reasons; they were unsettled in disposition, which prevented them remaining for any length of time in one employ, besides which they were dangerous men when under the influence of liquor, and much addicted to gambling, in which disputes frequently occurred ending in fighting and bloodshed. Natives of Madras also were not thought suitable, but one class whom the Chinese, it was considered, held in greater respect was the "obedient, submissive, courageous, and not addicted to drink" Malay, but such a body of good, serviceable men would have required something more than the pay offered, which was $6.50 per month. It is not known where this information was obtained from, in regard to the good qualities here given to the Malay. After many years' residence in the Straits Settlements, the author regrets to differ with the opinion expressed as to the Malay as a Policeman. As a rule, he is indolent and given to lying, and not the best class enlist generally, for the better Malay is proud and thinks the calling of a Constable derogatory to himself. The discipline does not suit him either, and although he manages to ingratiate himself with the Chinaman, as a rule there is not much love lost between them, and the one great objection to the Malay here would be that he would never remain in a place like Hongkong.*

Constitution of Police Force again discussed.

Poor wages.

Deaths among European Constabulary.

Excessive drinking of bad liquor.

Manila men as Policemen.

Natives of Madras.

The Malay.

The author's experience of the Malay as a Policeman.

* The author little thought that in the course of his reading he would have found himself corroborated in his views of the Malay as a Policeman. An attempt made in 1857 to enlist Malays in Singapore for the Hongkong Police Force proved abortive. See *infrà*, Chap. XVIII.

Ch. XII § I.

1850.

Mr. Tarrant's index to the Ordinances of Hongkong.

Dedicated to the Chief Justice.

Mr. Tarrant's case and his treatment.

Early this month was published "A Digest and Index of all the Ordinances of the Hongkong Government to the close of 1849," —the first book of the kind,—by Mr. William Tarrant, who has been before alluded to in this work and whose ill-treatment by the Government had gained him the sympathy of the public. The work was dedicated, by special permission, to the Chief Justice, and was favourably reported upon by Mr Sterling, the Attorney-General. If the Chief Justice had the slightest suspicion that Mr. Tarrant had been guilty of the offence put to his charge, there is not the slightest doubt that he would never have consented to his name being attached to anything in connexion with Mr. Tarrant, whose case undoubtedly added another stain to the administration of Sir John Davis through Major Caine in this particular instance. The work was a much-wanted one and was well received, doing Mr. Tarrant great credit. In regard to the latter, it may here be recorded that in June, 1850, he purchased and edited the local newspaper called *The Friend of China and Hongkong Gazette*.

He becomes proprietor and editor of *The Friend of China*.

Land. Report of Committee.

Inability of lessees to transfer a sub-division of their lots.

The report of the Committee.

The Committee appointed last year to inquire into the tenure of land in the Colony* made their report in a joint letter dated the 18th May, 1850. The Committee on this occasion represented the difficulty, which then already existed, of disposing of landed property in consequence of the inability of lessees to transfer a sub-division of their lots. In many cases several houses were built upon one lot, and it was considered convenient for the owner to dispose of a portion or portions of it, which, under the prevailing system, he was unable to effect. The Committee then recommended that such sales and transfers be permitted, and fresh titles granted by Government, stating that the restrictions then felt would thus be removed, and an enhanced value be given to property in the Colony.

*The China Mail* upon the subject.

Pending the publication of this report, *The China Mail* newspaper published a further article† in its issue of the 13th June, 1850, as follows :—

"The report of the Committee on the tenure of Crown lands in this Colony is understood to be at length in the hands of Government, and will probably be sent Home as soon as His Excellency the Governor returns from the north. In the meantime there are many reasons which render it desirable that it should be printed for general information. It will be remembered by many that the report of the Land Committee of 13th January, 1844,‡ was not open to the parties affected by it until it was published by order of the Parliamentary Committee at the end of 1847, and that it was then found to have been concocted with great disregard to the impartiality that ought to actuate the proceedings of such a body. The same thing is not apprehended in the present instance, but as it appears to be generally known that the three mem-

* *Antè* Chap. XI., p. 266.

bers of the Committee, who may be said to represent the Crown, differ in opinion from the two members who are supposed to represent the community, publication only becomes the more necessary that the community might be enabled to supply information and offer suggestions that may have escaped the notice of their representatives.

It has been often said by our officials that the holders of land purchased it with their eyes open, and that in consequence they have no right now to complain. This would be very true if the remark applied to a chest of opium, or a bale of cotton, or any article of consumption ; but it is a manifest fallacy when applied to the annual rental of land for a term of seventy-five years. It would, however, be no difficult matter to prove that the community had not their eyes open, for instance, at the land sale of January, 1844 ; they were not open to the 13th clause of the Supplementary Treaty, nor to the Registration Ordinance, nor to any of the after measures of the land sellers, so distasteful to the Chinese, nor to the establishment of monopolies, a mode of raising revenue which all writers agree to be most grievous and destructive to commercial prosperity. No Englishman could have calculated at the sale on such conduct from his own Government, as that trade, the advancement of which is the object of so much solicitude in his own country, should be thus stunted and trampled on in one of its colonies.

At the first land sale under Sir Henry Pottinger, and probably at others, a copy of the lease was read as the conditions of sale. In terms of that lease, the tenant holds his land, "together with all easements, profits, commodities, and appurtenances whatsoever." There are certain reservations to the Crown in case of the land being required for public purposes ; all mines, minerals, and quarries of stone, marl, clay, chalk, brick-earth, gravel, sand, stone and stones, are also reserved, with the further condition that the ground rents shall be paid clear of all taxes, charges, and impositions whatsoever. It would therefore appear that the alienation of profits, by the sale of monopolies "giving to one or a few individuals the sole privilege of buying, selling, making, working, or using of anything," is, besides being contrary to the law of England, a direct violation, on the part of Government, of the only covenant in the lease that is in favour of landholders.

If the proprietor of a street, after he had let most of his shops on lease, were, by way of getting more revenue, to put a toll at each end, at which to tax the customers of his tenants, the consequence would be that he would not only depreciate the value of his shops to his tenants, but also of his own inlet shops, and people would naturally turn to the untaxed thoroughfares, to which the trade of the other would also be removed, and it would not readily return to the first street even if the barriers were taken away. Suppose it was afterwards found that the barriers had been erected illegally, contrary both to lease and law, would not an action for compensation lie against the proprietor for all damages sustained ?

Such then is the situation of the Crown tenants of Hongkong in relation to their Government—they have a claim for injuries sustained by the operation of monopolies for the past, and a reduction of rents for the future. This would be the case were the matter between two individuals, and there can be no difference of principle when the case is between private individuals and the Crown."

The opinion of the Attorney-General, Mr. Sterling, upon the inability of Crown lessees to divide their lots in portions.

Upon the subject of the inability of the Crown lessees to divide their lots into portions, the Governor, Mr. Bonham, took the opinion of the Attorney-General, Mr. Sterling, who gave his opinion in August, 1850, as follows :—

"The Crown lessee unless prohibited by his lease may make sub-leases ; this being so, house property is similarly circumstanced here as in all towns in England.

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"If in any case the Crown be willing to adopt the under-tenant as its immediate lessee it can do so (supposing there be no liens or encumbrances attaching to the head lease), in its own discretion, by accepting a surrender in writing of the head lease, and then granting two leases of the original lot as apportioned by the two tenants, but in doing so or in any other way interfering with the title created by the first lease, the danger will arise of interfering with the securities and remedies of unregistered encumbrances or creditors having or about to obtain executions."

(Signed) PAUL STERLING.
August, 1850.

Mr. Bonham then wrote to the Secretary of State upon the subject (despatch of the 29th August, 1850) in which he stated that, in his opinion, it would be well that parties should be allowed to dispose of portions of their properties, as recommended by the Committee; but thought the concession might be open to much abuse in cases where any party, having a house erected on a large lot of ground, might be desirous of getting rid of a part of the ground to a man of straw, because it was useless to himself, while the individual to whom it was sold, having no property in the Colony, might quit it, leaving the Government without any means of enforcing its just claim.

First Criminal Sessions after abolition of Vice-Admiralty Court. Act 12 and 13 Vict., c. 96.

The jury saved considerable labour.

No Grand Jury.

A Criminal Sessions of the Supreme Court was held on Monday, Tuesday, and Wednesday, the 15th, 16th, and 17th June, under the presidency of Chief Justice Hulme. Twenty-four cases were set down for trial, including cases of piracy. The abolition of the Vice-Admiralty Court by a recent Act of Parliament (Act 12 and 13 Vict., c. 96) had nominally added to the labour of the Court, though in point of fact both the Court and Jurors were saved a great deal of labour. The Court of Admiralty required a Grand and Common Jury of at least twenty-four, and to provide a double set of jurors, the Sheriff had to summon nearly every eligible person on the island. In the Criminal Court there was no Grand Jury; the Common Jury only numbered six. Consequently for each Sessions from fifteen to eighteen Jurors sufficed, and for the future the duty would be comparatively light.

Court held in large upper room for first time. The accommodation.

The Press reporters.

The Court was now held in the large upper room, the one still in use to this day. It accommodated as now a large number of people, and the middle portion was railed off and fitted up with benches. Members of the press were privileged with chairs at a table inside the bar where it still is, and a hope was expressed that "they would testify their regard for the attention shown for their accommodation by appearing there in the ordinary garb of gentlemen."

One important case tried at this Sessions, was that of the pirates captured by H.M. Sloop *Reynard*. Of the fourteen men brought up for trial, three were found guilty of murder and piracy, and sentenced to death; nine were sentenced to transportation for life—the heaviest punishment in the power of the Judge to inflict, and two were able to prove to the satisfaction of the Jury that they had been prisoners in the hands of the pirates and were, of course, acquitted.

Pirates captured by H.M.S. *Reynard*. Three sentenced to death and nine transported.

Another important case was a prosecution for perjury, the first ever tried in the Colony,—an offence though of frequent occurrence never prosecuted before, possibly in a great measure from want of harmony in the working of the different tribunals; so that a witness, who had sworn one thing before the Chief Magistrate, was permitted with perfect impunity to swear the very reverse before the Chief Justice, having evidently been tampered with in the meanwhile. The evil had been increasing because the opinion prevailed among the Chinese that the offence was not a punishable one by our laws. There could be no doubt of the prisoner's guilt, but a good deal depended upon whether it amounted to perjury, for, according to the testimony of Mr. Hillier, the Chief Magistrate,—a very competent authority in such matters at this stage of his career,—when questioned by one of the Jury, it would appear that the oath, although the usual one administered to Chinese in the law Courts, was really no oath at all. The following was the substance of Mr. Hillier's evidence upon the point: "He was in his Court on the 12th February last when a case was brought before him in which the present prisoner charged another man with highway robbery and in giving his evidence said 'he never saw defendant before, had had no dealings with him, and owed him no money.' *The man had been sworn by burning paper, the manner in which Chinese are sworn in Hongkong.* An affirmative or negative given to a question in this way would affect his decision, but as regards his opinion of its efficacy in making a Chinese speak the truth, witness thought it was of no efficacy at all." Whence came the absurd custom of giving Chinese witnesses a slip of paper to burn before entering the witness-box cannot be discovered, but it is believed that no Chinaman or foreigner conversant with Chinese customs ever considered it of any efficacy whatever.

First prosecution for perjury in Hongkong.

Opinion prevalent among Chinese that offence not punishable.

The testimony of Mr. Hillier.

Oath no oath at all.

How Chinese were sworn in Hongkong.

The prisoner had been sworn by 'burning paper.'

Efficacy of such oath.

Origin of such oath.

In this part of China, it was believed by some that there was but one ceremony binding, and under which many natives would speak the truth, or at all events be less likely to prevaricate. It is recorded in one case that a prisoner, when asked if he had any questions to put to the witness, replied that it would

Ceremony of cutting off a cock's head as part of an oath.

Ch. XII § I. truth, and therefore begged that he should be re-examined *after going through the ceremony of cutting off a cock's head*; but the presiding Judge seemed to consider the demand unreasonable and refused to depart from the usual routine of the Court, though the Court seems afterwards at least to have sanctioned in certain cases this mode of swearing according to native custom, as will be seen hereafter.*

1850.

Refusal by the Court to depart from usual routine. Oath by cutting off cock's head recorded.

Chief Justice's sentence. Although first trial for perjury, not first offence. The sentence.

In pronouncing sentence in the present case, the Chief Justice stated that, though he believed this was not the first offence of the sort that had been committed, *it was the first that had been brought to trial*; and he would therefore visit it with a severe sentence which he trusted would operate as a warning to others, and he accordingly sentenced the prisoner to two years' imprisonment with hard labour.

Practice heretofore of not requiring witnesses to leave the Court.

It would appear that it was not the practice of the Court up to this period to require witnesses to leave the Court to await their turn while the cases in which they were interested were being heard, for a suggestion was made in the course of this Sessions by one of the Jury that the witnesses should be ordered out of Court, while the trial was going on. The suggestion was acted upon, and, as was remarked, would probably be so again should a juryman or, what was unlikely, a prisoner require it; but why, was it asked, was it not made an absolute rule of Court as in Scotland, where witnesses were not only excluded, but must be locked up in a separate room, the omission of this being a good objection to their evidence being received. This would do more to secure the ends of justice than a rigid adherence to forms or inflicting "the utmost rigour of the law" when a conviction was obtained.

Rule in Scotland.

Interpreter for Malay, Hindustani, and Portuguese advertized for. Duties of Census and Registration Officer performed

On the 16th April, the Government advertized for a person competent to interpret in the Malayan, Hindustani, and Portuguese languages, and on the 26th it was notified that the duties of the Census and Registration Office would be conducted by Mr. May, Superintendent of Police, from the 1st May.

The Governor and Mrs. Bonham left for the northern consulates on the 27th April, Major-General Staveley, C.B., Lieut-

* From the very earliest days in the Straits Settlements, this custom has been adhered to. Natives of whatever class who have asked for the privilege of being allowed to take an oath, according to the belief of their own sect, have seldom been refused it, especially when consented to by the other side. This is so much the case, that recently when re-enacting the law of Evidence in the Straits, [*Straits Ordinance No. 5 of 1890, ss. 8, 9*] provision was made giving authority of law to the principle. The following is one of the instances referred to:—April 13, 1883. *Lim Guan Tuet* v. *Yew Boh Neo and Anor.* Action on a Promissory Note. *Ford*, J. "By consent of both parties, if plaintiff goes to swear according to Chinese custom by cutting off head of a cock, and burning joss sticks before the temple in Pitt Street, he shall have verdict, if plaintiff refuses to do so, there will be verdict for defendants." Kyshe's Rep. S.S., Vol. I., [*Jud. Hist.*] p. XXXV.

enant-Governor, administering the Government during the Governor's absence. It was understood that the state of Mrs. Bonham's health afforded too good a reason for the trip, and the diplomatic and ornamental staff which Mr. Bonham took with him portended also some affairs of State. The Governor did not return to the Colony till the 18th July, when he re-assumed duties.

by Mr. May, Superintendent of Police.

Governor leaves for northern consulates.

Major-General Staveley acts.

Cause of Mr. Bonham's tour.

The three Chinese who were condemned to death for piracy at the last Criminal Sessions were hanged at West Point on the morning of the 1st May. They seemed perfectly cool and resigned until placed upon the scaffold, when, in consequence of some gross carelessness, the bolt was found to be either rusty or twisted, so that it would not draw, and the poor wretches were kept standing for more than twenty minutes with the ropes round their necks. During this trying time two of them fainted and had to be supported on the scaffold, the third calling out "be quick, be quick," until, every other plan having been tried in vain, the gaoler went off to the naval stores and returned with two hammers, by means of which, after a deal of labour, the bolt was forced from its socket and the platform fell. With whom the blame rested, the authorities were best able to judge, but certainly such neglect, it was remarked, ought not to be overlooked, more especially as a similar incident occurred at the execution of the six men referred to in June, 1849.* The mishap was attributed to the old and rickety state of the gallows, and fears were entertained by the spectators that it would be dragged to pieces by the hangman in his desperate though unsuccessful efforts to draw the bolt.

Convicted pirates hanged at West Point. Disgraceful scene at the execution.

The authorities blamed.

Old and rickety state of the gallows.

During the absence of the Governor, as stated above, the Lieutenant-Governor, Major-General Staveley, C.B., by proclamation dated the 23rd May, granted a free pardon to no less than eighteen prisoners, sixteen of whom had been sentenced by the criminal tribunal and two by Courts-martial. The occasion fixed for this act of grace was the Queen's Birthday, and it was hoped that a custom originally, it was thought, introduced into the Colony by Mr. Johnston, the Secretary to the Plenipotentiary, would be kept up as a means of tempering the severity and mistakes, not always inexcusable, of our criminal procedure. The next day, the 24th, two European convicts, named Steele and Newton, who had not been included in the above proclamation, escaped from gaol by means of a bamboo placed against the wall. They were both, some hours after, re-captured dead drunk in the town. Steele was the publican who was formerly in the Police, and had been sentenced to twelve months' imprisonment in February last for assault with stabbing,† and Newton was the mate of the *Gallant* sentenced in November,

Prisoners pardoned on Queen's Birthday.

European convicts Steele and Newton escape.

They are re-captured dead drunk.

* *Antè* Chap. XI., p. 241.
† *Antè* p. 276.

Ch. XII § I. 1849, to twelve months for larceny on the high seas.* They, as well as another prisoner named McIlroy, who had assisted them in effecting their escape, were committed for trial at the July Sessions. When information of their escape reached the Police it would appear that every means possible was used in order to effect their re-capture, the harbour and boats being searched lest the men should get away.

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**They and a fellow-prisoner, McIlroy, who had aided them, are committed for trial.**

In his zeal to arrest these men, a Police Sergeant named de Silva, imagining that the men might be on board a Chinese boat which he saw sailing away, hailed it, but, finding no attention paid to him, he fired a shot through the sails killing the owner, a Chinaman. At the Coroner's inquest the next day, the Jury returned a verdict of "accidental death;" but this undue precipitancy and want of caution does not appear to have met with any other redress than the ordinary strictures of the press. It may be added that the deceased's two sons were with him in the boat at the time.†

**Zeal of the Police before the arrest of the escaped convicts. A Police Sergeant shoots a Chinaman. Verdict of accidental death. Strictures of the Press.**

**Mr. Caldwell rewarded.**

Mr. Caldwell, the Assistant Superintendent of Police, now came in for a share of public praise. It was with pleasure that the public had heard that he was about to be rewarded for his arduous services. He had received the further appointment of paid Interpreter to the Supreme and Chief Magistrate's Courts, which added £150 per annum more to his salary, and which made up his income as Assistant Superintendent of Police, Joint-Assessor of Police Rates, and Interpreter, to about £600 per annum. On the representation of the Governor to Lord Grey, setting forth the important services rendered by Mr. Caldwell throughout the recent expeditions for the suppression of piracy, the Secretary of State addressed the Lords of the Admiralty in his favour, and they were pleased to order that Mr. Caldwell be held entitled to head-money after the rank of a lieutenant. This yielded him some £600. Though it is not wished to disturb the ashes of the dead, it is impossible at this stage to pass over Mr. Caldwell's conduct as a responsible police officer in regard to the confidence he had placed in the pirate and informer Too Apo, as reported in January, 1848, notwithstanding the reason he had for suspecting that this miscreant was taking advantage of the 'credit' given him. The facts were so palpable that one hardly knows, having regard to the consequences that ensued, how to qualify the behaviour of such an officer under the circumstances. However, the facts are recorded‡ and one can draw one's own inferences, and Mr. Caldwell probably was not the only one to blame.

**He is appointed interpreter to the Supreme and Chief Magistrate's Courts.**

**His income in the other positions.**

**On the representation of the Governor to Lord Grey, he is allowed head-money for suppression of piracy.**

**Mr. Caldwell's conduct in the past concerning Too Apo.**

**Comparison drawn between**

In June, a Singapore newspaper alluded to the superior mode of conducting the civil business of the Supreme Court

* *Antè* Chap. XI., p. 262.

† See the previous case of shooting at Chinese in the harbour—*antè* Chap. X., p. 209.

‡ See *antè* Chap. IX., pp. 189-192, and references there given.

in Hongkong where all cases, irrespective of amount, were tried, compared with the former place where the people were left to a Commissioner of the Court of Requests, who was not a professional nor a highly paid official. The remark passed here was, that it was very easy to fancy things, "but if Singapore had had such a 'beauty' for a Judge as the people here were acquainted with in 1848 (allusion being made to Mr. Campbell, who, even at this late period, still came under the invectives of the public press), his services would have been found dear at any price."

trial of civil cases in Hongkong and Singapore.

Commissioner of Court of Requests in Singapore not a professional.

Mr. Campbell alluded to as a 'beauty.'

On the 14th June, it was notified that Her Majesty the Queen had been pleased to appoint Messrs. David Jardine and Joseph Frost Edger, elected in December last by the Justices of the Peace for the purpose,* members of the Legislative Council, and they were sworn in accordingly.

Appointment of Messrs. Jardine and Edger as members of the Legislative Council notified.

They are sworn in.

A seat in the Legislative Council is the highest honour which can be conferred in a Colony, though it is a fact within the author's own knowledge that several times leading mercantile men in the neighbouring Colony of the Straits Settlements have shown, for some cause or another, their lack of appreciation of the honour sought to be conferred upon them, by declining it. In the present instance, however, the honour was enhanced from the circumstance of the nomination of the two unofficial members having been left to the unbiased selection of the Justices of the Peace, themselves leading members of the civil community. The new members would have but limited power—that of advice, but the gentlemen now added to the Council were possessed of qualities which assured one that for the future an independent expression of opinion would not be withheld upon any subject of importance to the community.

A seat in the Legislative Council as an honour.

Limited powers of the elected members.

Mr. Frederick Smith, Deputy Registrar of the Supreme Court, died at Macao, on the 16th June, 1850. He had been in failing health for some time, and when he left for Macao for a change, it was not expected he would ever return. The deceased had been upwards of six years in the public service, having succeeded Mr. McSwyney upon his resignation of the Deputy Registrarship,† and was an efficient and zealous officer, with an irreproachable character. Out of his small salary he could make no provision for his widow and family, who now mourned his loss. The Lieutenant-Governor, in the absence of the Governor, and the members of Council, with praiseworthy liberality, accordingly granted Mrs. Smith £100 from the civil chest, and Messrs. Jardine, Matheson & Co., on being applied to for a passage in one of their ships for Mrs. Smith and family,

Death of Mr. F. Smith, Deputy Registrar. His career.

Public liberality and sympathy to his family.

* *Antè* Chap. XI., p. 261.

† See Chap. III. § II., p. 83.

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presented her with £50. Messrs. Dent & Co. gave a donation of £30, and there were similar instances of generosity on the part of other members of the mercantile community, testifying to the respect in which Mr. Smith had been held.

**Office of Clerk of the Court and Deputy Registrar merged and conferred upon Mr. W. H. Alexander. The time of the Registrar.**

Consequent upon Mr. Smith's death, the office of Clerk of the Court was merged with that of Deputy Registrar, and conferred upon Mr. William Hastings Alexander, the Clerk of the Court. It was not expected that public interests would be essentially benefited by the burdening of one man with the two offices, to save a trifle like £250 per annum. The Registrar's time at this period, it is recorded, was fully engrossed with intestate's estates and attendance in Court.

**Establishment of the Supreme Court at this period.**

At the time of Mr. Smith's death, the Supreme Court was thus constituted: Chief Justice, the Honourable J. W. Hulme; Registrar, Robert Dundas Cay; Deputy Registrar, Frederick Smith; Clerk of Court, W. H. Alexander; Clerk to the Chief Justice, G. A. Trotter; Clerk and Chief Usher, J. Smithers; Chinese Interpreter, D. R. Caldwell; Malay and Bengali Interpreter, Eugenio L. Lança; Bailiff, M. Smithers; Assistant Bailiff, Mr. Crooke; Mahomedan Priest, Syed Muckseff.

**July Criminal Sessions. Case of conspiracy to sell a girl for purposes of prostitution.**

The July Criminal Sessions commenced on the 15th of that month. There were eleven cases on the calendar. A few only of the cases tried call now for special notice. The first of these was conspiracy to sell a young girl for purposes of prostitution. Three of the parties concerned were indicted, one of whom was acquitted from defective evidence, and the other two, a man and a woman, were convicted and sentenced to a year's imprisonment with hard labour, the principal witness being probably the most culpable of the whole. Next morning, on the assembling of the Court, the jury who had sat on the case were again empanelled, and informed by the Chief Justice, that as it appeared the prisoners were man and wife, and therefore one in the eye of the law, they must be acquitted since it required two persons to make a conspiracy.* That the prisoners were guilty and deserved punishment there could be no doubt, and they now escaped by a technicality. What had occurred only the more confirmed the impression, if not opinion, so openly expressed before, that the law as administered in the Criminal Court of Hongkong was, to say the least, not suitable to the great majority of cases brought before it.† Was it therefore wonderful that the

**A man and woman convicted and sentenced.**

**They are found to be man and wife and are discharged, two being required to a conspiracy.**

**English Criminal Law unsuitable. Chinese neither**

* Two were required to constitute a conspiracy, but a different doctrine was propounded in the now well-known case of Mr. Tarrant, who was indicted as a sole conspirator, and had the case been brought to trial this point presumably, if taken, would have been a fatal objection, but apparently it was contrived to punish him beforehand by suspending him from his office and then effectually preventing his ever being restored by declaring it abolished.—See *antè* Chap. VIII. § I., p. 170, and Chap. XI., p. 239.

† On this point, see *antè* Chap. XI., p. 264.

Chinese could neither fathom our justice nor understand our law? But another question arising in this matter was, how came the indictment to be so framed and why was not the objection seen to and provided against before the trial? As was very properly remarked, there were two Police Magistrates and an Attorney-General, all well paid and certainly not over-worked, and yet, Sessions after Sessions, cases were set down for trial which, even without the handling of prisoner's counsel, fell to pieces by their own inherent weakness, or through some legal flaw, which, it was said, an attorney's apprentice at Home would be ashamed to have overlooked.

fathom our justice nor understand our law.

Legal flaws again commented upon.

Police Magistrate and Mr. Sterling, Attorney-General, taken to task.

The next case was that of Steele, Newton, and a lad named McIlroy, for prison-breaking on the 24th May last.* Steele, it will be recollected, was the ruffian who got off with twelve months' imprisonment, though a Chinaman for a similar crime was condemned at the same Sessions to fifteen years' banishment. It was a pity that, as he had incurred the penalty of transportation, it was not inflicted upon Steele as the best means of ridding the Colony of one especially *mauvais sujet*. Being, however, a fellow of determination, he exercised complete control over Newton, a man greatly his superior in disposition and education, and who at his trial addressed the Jury in a speech which was not only superior to any hired eloquence ever heard in the local Criminal Court, but which, it was reported, was positively excellent. He showed pretty clearly that the offence could hardly be classed as prison-breaking *seeing that the facilities for escape were so great;* that he went out on the Queen's Birthday to have a spree, and did have one in a place where he might readily have been and was recognized; and that, as only a short period of his former sentence had to run, it was not probable he would run so much risk for so little profit, for had he intended to leave the Colony, which he might easily have done, he could have taken his property with him and used it to facilitate his escape instead of leaving it behind. In fact, it would appear that he and Steele calculated *on being able to slip into, as they had slipped out of,* prison, unobserved, and thus established a system of exits and entrances whenever they took a fancy for a "spree" or could induce their keepers to participate in same. So the Gaol, which cost so much, and was so ill-managed, could not have been so very bad a place after all. Steele was sentenced to three months' additional imprisonment, Newton to two, and the boy McIlroy was fined one shilling, giving one an idea of the Chief Justice's opinion of the gaol in those days.

Trial of Steele, Newton, and McIlroy for prison-breaking.

Newton, an educated man.

Facilities for escape great.

Only 'went out' of prison for a spree on the Queen's Birthday.

Newton and Steele calculated on 'slipping in' as they had 'slipped out.'

The costly Gaol not so bad a place.

Sentence on the prisoners.

Ten Chinese (Chun Ahtsup and others) were sentenced to death for piracy with stabbing at this Sessions, to nine

Ten Chinese sentenced to death.

* *Antè* p. 285.

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Articles of evidence abstracted after trial.

of whom the Chief Justice stated he could hold out no hope of mercy. A bundle of clothes lying on the floor of the Court House was sworn to by two of the witnesses without examining it or being asked to do so, the bundle outwardly presenting every appearance of being the same as had been sworn to before the Police Magistrate. But after the trial was over and the bundle given up to the claimants, the witnesses discovered that the best articles of apparel had been abstracted, and others, old and worn, substituted. The fact was subsequently mentioned to the Attorney-General who said he would speak to the Sheriff, but he was requested rather to speak to the Judge.

The Attorney-General says he will speak to the Sheriff.

Indignant at the strictures passed upon him, Mr. Sterling requests a local journal to remove his name from list of subscribers. Comments. First recorded unpleasantness concerning Mr. Sterling.

Indignant at the strictures passed upon him by the local press at this Sessions, Mr. Sterling wrote to a local journal requesting the removal of his name from the list of subscribers. This seemed childish for a man of Mr. Sterling's standing and ability, for undoubtedly the remarks seemed very *à propos*, but human nature is weak and this was but an example. "Nothing," added the journal, "will convince us or the public, that the strictures on the mode in which the criminal business of the Colony is conducted have been uncalled for." In justice to Mr. Sterling, however, it is but right to say that this is the very first time anything unpleasant to him can be traced in the records from the date of his arrival in the Colony.

Mr. Gaskell gazetted Proctor in Admiralty.

On the 24th July, Mr. Gaskell was gazetted Her Majesty's Proctor in Admiralty. He was the oldest resident solicitor in the Colony. Mr. Wm. D'E. Parker had been gazetted to act in this capacity for his brother on the departure of the latter in September, 1849,* and why he did not keep the appointment is not shown.

Hongkong in the House of Commons.

The annual parliamentary vote discussed.

It was gratifying to find that Hongkong had at last attracted the earnest attention of the House of Commons. On the annual grant for the Colony being proposed on the 22nd July, the Honourable Francis Scott took occasion to move an amendment which was supported by independent members of all shades of politics and lost by a narrow majority of twelve only. A great advantage had been gained which in its results would prove better than if Government had suffered a defeat by which the Colony must have been brought into evil odour with the Colonial Office. The salaries of the Governor at £6,000, the Chief Justice at £3,000, the Attorney-General, with private practice, at £1,500, and the Chief Magistrate at £900, formed the subject of very severe criticisms. It was regretted that it did not occur to any of the speakers that the true remedy for the existing evils was to be found in an entire change in the

Salaries of Governor, Chief Justice, Attorney-General, and Chief Magistrate criticized.

* *Antè* Chap. XI., p. 255.

system of Government, not in curtailing the expenses of the then existing one. It would have been a breach of faith to reduce the salaries of the existing holders of office, and it was not such parings down as honourable members argued for, that the community asked for, but some measure of self-government and the making of their own laws.

Commutation of sentences of death passed on Chinese, to whom Chief Justice had held out no hope of mercy.

A proclamation on the 1st August commuted the sentences of death passed upon the nine Chinese at the July Criminal Sessions (*Regina* v. *Chun Ahtsup and others*), to whom the Chief Justice had said he could hold out no hope of mercy, to transportation for life. Surrounded on every side by hordes of pirates whose very existence was dependent on robbery; whose hands no law of humanity ever stayed from adding to the crime of robbery, that of atrocity and murder, the advisedness of the clemency which the Governor had on this occasion put forth was questioned, honourable as it was to His Excellency's feelings. It made a *precedent* which could not readily be broken through. It is a safe proposition that the punishment of death is misapplied whenever the general feeling it creates is that of compassion for the criminal, but what compassion would these condemned miscreants have received had their sentence been fully enforced?—none from the foreign community, and none from their own countrymen, except from among those whose lives were like what theirs had been. It may have been that in the attacks made last year by Her Majesty's vessels on the piratical fleets, both westward and eastward, many innocent lives were sacrificed. This was not a far-fetched presumption, and, could proof be adduced that such actually took place, compassion and pity would not have been wanting; but in the present case the most clear and irrefragable evidence was adduced that the men were not only pirates, but murderers. Moreover, they never denied their guilt, but, in supposed extenuation, charged the witnesses with aiding in their cruel deeds, and the mercy shown to them by the Governor was by them in the last degree undeserved. The first, and happily until this,* the writer is glad to say, the only Englishman condemned to death by the Criminal Court of this Colony, the unfortunate Ingwood in July, 1845, was hanged for murder perpetrated in a drunken frolic.† Death punishments to be upheld at all, can only be for the sake of *example*. No such example is required to keep Englishmen from tying together the hands and legs of a countryman and throwing him into a river; but unhappily example is required to prevent Chinese from committing piracy and perpetrating murder, which they will as readily execute on our countrymen as on their own. If an example was necessary to prevent our fellow-countrymen from commit-

Misplaced leniency of the Governor.

Example required to prevent Chinese from committing piracy and murder.

Comparison with our own countrymen.

* See the case of the sailors Gibbons and Jones, Chap. XXVI., *infrà*.

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ting a crime to which, thank God, they are not habituated, how much more necessary are examples to restrain Chinamen from committing crimes to which they are so prone. The Governor probably would find himself hampered when next he was brought to deal with a case of murder. It may have been that since their conviction fresh facts justifying the clemency extended to the men had come to the knowledge of the authorities, but, in ignorance of such, the community were not wrong in expressing their sense of disapproval at the action of the Government. They were not bloodthirsty, but could not forbear their opinion that mercy had been misapplied. Men had been sentenced to death in the Supreme Court on very doubtful evidence, to say the least, as witness the cases in which the infamous Too Apo had been concerned.* But in the present case they stood self-convicted. The cook had confessed to the murder of some ten or eleven persons with his own hand. The public concurred in saying that it was impossible to understand why these men were not hung. The blood of the murdered men was still to be seen on the deck of the vessel and cried aloud for vengeance, and not unnaturally therefore this interference with the sentences of the Court gave rise to unnecessary friction between the Bench and the Government, the Chief Justice, at the February Sessions, 1852, declining to sentence to death several prisoners found guilty of murder, owing to the leniency of the Governor in the present case.

Fresh facts justifying clemency.

Interference with the Court's decision the cause of friction with the Executive.

A passage to Penang for twelve Chinese convicts was advertized for on the 4th September.

Passage for Chinese convicts to Penang.

During this month a terrible massacre occurred on board the French ship *Albert*, on her passage from Cumsingmoon to Callao. This vessel had on board a batch of one hundred and eighty coolies, some or all of whom suddenly rose, killed the captain and threw him overboard, and with him the first and third mates, a passenger, and the cook. Of the one hundred and eighty shipped, one hundred and thirty-two decamped from the vessel, leaving on board forty-eight of the most helpless, who came into the harbour in the vessel. The whole of them were, of course, arrested by the Police, and having been taken before the Chief Magistrate, underwent a most lengthy and searching investigation. This investigation, which occupied some seven or eight days, resulted in the committal of all of them to prison to be there detained, under an express order from His Excellency the Governor to the Chief Magistrate, to await the determination of the French Minister regarding them, and in prison they remained until the 1st April, 1851, when they were duly handed over to the French authorities on board the French Corvette *La Capricieuse*. Having got these unfortunate men off their hands, and the bill

Massacre on board French ship *Albert* by Chinese coolies.

Arrest of the coolies.

The investigation.

Lengthy detention in prison.

* *Antè* Chap. IX., pp. 189-192.

paid for their keep, during their seven months' incarceration, the authorities doubtless felt perfectly satisfied that they had done their duty. Ch. XII § I. 1850.

Rear-Admiral Charles John Austen, C.B., who had succeeded the late Admiral Sir Francis Collier* as Commander-in-Chief on the China Station, arrived in Hongkong for the first time in the flagship, H. M. S. *Hastings*, on Thursday, the 10th October. Admiral Austen succeeds Sir F. Collier.

The October Criminal Sessions opened on the 15th. Two Chinese convicted of piracy were sentenced to death, while Edward Cousens and Edward Neill, of the British ship *Kelso*, for causing a revolt on board and running away with the ship, were sentenced, the first, to transportation for life, and the second, to transportation for fifteen years. October Criminal Sessions. Pirates sentenced to death. Case of Ed. Cousens and Ed. Neill, of the *Kelso*, for causing a revolt on board. The sentence.

Mr. Caldwell sailed on Tuesday, the 29th October, in the *Rob Roy*, on three months' leave for the benefit of his health. As Assistant Superintendent of Police he was replaced by Mr. Clifton, a deserving police officer,† but in his other duties, as Chinese Interpreter especially, the want of his services was much felt. Mr. Caldwell takes leave. Mr. Clifton acts as Assistant Superintendent of Police.

On the 7th November, twenty-four Chinese convicts were shipped on board the *Eagle* for Penang. Chinese convicts shipped to Penang.

*The London Gazette* of the 22nd November, 1850, announced that "The Queen had been pleased to give orders for the appointment of Samuel George Bonham, Esquire, Companion of the most Honourable Order of the Bath, Chief Superintendent of Trade of Her Majesty's subjects trading to and from the dominions of the Emperor of China, and Governor and Commander-in-Chief in and over the island of Hongkong and its dependencies, to be an ordinary member of the civil division of the second class or Knights Commanders of the said most Honourable Order." The news was brought to Hongkong on Monday, the 20th January, 1851, by the P. & O. Steamer *Pekin*, and seems to have given general satisfaction. The investiture of the Governor took place at the Government Offices on Saturday, the 22nd February, at a quarter to twelve, with all the usual ceremony, Major-General Staveley, under a warrant from Prince Albert, the head of the Order, investing Sir George Bonham with the insignia. Governor Bonham knighted. The investiture.

The December Criminal Sessions opened on the 16th of that month. None of the cases were of great importance, although before the trial of the case of Chum Ayee, charged with wounding, the foreman of the Jury stated to the Court that he objected to the interpretation of Tong Achik, the Police Court Interpreter, December Criminal Sessions. The jury object to the interpreta-

* See *ante* Chap. XI. p. 259.

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doing duty in the Supreme Court in the absence of Mr. Caldwell. The Chief Justice requested him to state the grounds of his objection, but he declined to do so, fearing to say too much probably, upon which the Chief Justice stated that "the grounds should be as open as the objection," at the same time directing the other Interpreter of the Court to "check any erroneous interpretation." Thus was repeated a complaint that was formulated at the very commencement of the settlement of the island, and which has been touched upon frequently in this work,* and Mr. Caldwell's departure had now probably made matters worse. As regards the interpreter Tong Achik, as events proved afterwards, the Jury were not altogether wrong, and probably had just grounds for objecting to him, he being dismissed from the service in September, 1851, after a committee of inquiry had reported upon certain charges brought against him for abusing his office, and trafficking with pirates.

tion of Tong Achik, the Court Interpreter.

The Chief Justice says 'ground should be as open as the objection.'

Interpretation question, the repetition of an old complaint.

Tong Achik afterwards found unfit.

Order that interpreters be not eligible for Consulships.

Scholars eschew the Canton dialect.

It was now reported that an order had been received from the Home authorities which rendered interpreters ineligible for appointments to consulships. It seemed a strange circumstance, but still true, that the only interpreter in the Court was a person who only understood the language *orally*—scholars eschew the Canton dialect—and in consequence the proceedings in the Supreme Court were lately conducted in the absence of Mr. Caldwell, as seen above, by a Chinese upon whose interpretation one of the Jurors had determined not to convict, and luckily the evidence clearly led to an acquittal.

Governor Bonham's care as regards legislation.

But five Ordinances were passed during the year, still denoting Mr. Bonham's care in not passing too hasty and unmatured legislation. Of old the Colony had been inundated with Ordinance after Ordinance. The tone of nearly all those which were promulgated by Sir John Davis was considered so obnoxious, their requirements so exacting, and the fate of so many of them being unfortunate, when scrutinized by the Home authorities, that Ordinance-making in Hongkong had come to be looked upon as farcical. The few which had been promulgated by Sir George Bonham met with a fair share of criticism, and those passed during this year could not be said to have been unimportant or unnecessary, especially Ordinance No. 5 of 1850, regulating proceedings before Justices of the Peace.

Ordinance No. 5 of 1850.

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Land.

By the despatch of Earl Grey to Governor Sir George Bonham, dated the 2nd January, 1851, in reply to the Governor's despatch of the 29th August, 1850,† Earl Grey stated the conclusions at which he had arrived, after a careful consideration of the papers before him. As regarded the system of selling

Despatch of Earl Grey in reply to Governor Bonham.

Crown lands to the highest bidder at an annual rent, he was decidedly of opinion that, in future, biddings for Crown lands should not be in the form of an advance of rent; but that any such property should be offered for lease at a moderate rent to be determined by the Crown Surveyor, and that the competition should be in the amount to be paid down as a premium for the lease at the rent so reserved by parties desiring to obtain it. And on the question of affording Crown lessees the power of alienating portions of their lands, Earl Grey stated his opinion to be that such a measure, if properly guarding against the inconveniences suggested by Governor Bonham and the Attorney-General, would be very desirable, and that it was a subject which he was quite prepared to entrust to the discretion of the local Government.

**Ordinance No. 1 of 1851. Depositions of absent witnesses read at trial.**

An Ordinance for the improvement of the law of evidence at the trial of criminal cases before the Supreme Court was passed on the 3rd January, 1851. It had been generally apprehended that between the committal for trial of prisoners and before the time for such trial, witnesses for the Crown had been removed from the Colony; in many instances by force or bribery, and, in order to counteract such practices, power was now given by this Ordinance (No. 1 of 1851) to the Supreme Court to direct that in a criminal prosecution the deposition of any Crown witness absent from the Colony may be read as evidence at the trial, under certain defined circumstances.

**Proposal of Justices of the Peace that Police Force be under control of a Municipal Committee. Governor's offer.**

The Justices of the Peace, having some months back proposed that the Police Force should be placed under the control of a Municipal Committee, in a mode similar to that obtaining in an English borough, the Governor on the 10th January, stated that he would offer no objection to the measure, provided an assessed tax were raised on real property for the purpose of providing for the necessary expenses, as the general revenue of the Colony would prove insufficient. This suggestion, however, was eventually declined by the Justices.

**Escape from gaol.**

Another of the frequent escapes from the Gaol was reported on the 31st January. This was the escape of Tam Achuen, who had been convicted at the Sessions of December last of forgery, and who had been sentenced to two years' imprisonment with hard labour. Tam Achuen since his imprisonment had been employed as a servant to one of the turnkeys.

**Departure of Lieutenant**

On the 4th February, it was notified that, in consequence of Lieutenant Pedder, the Harbour Master and Marine Magistrate,

Ch. XII § II. recovery of his health, the Governor had directed that the duties of Marine Magistrate, until further orders, should be performed at the Chief or Marine Magistrate's Office by the sitting Magistrate or Magistrates of the day, and that the duties of Harbour Master should, as a temporary arrangement, be performed, under the supervision of Mr. Hillier, by Mr. E. R. Michell, clerk in the Harbour Master's Office.

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**The Marine Magistrate's duties, how performed.**

**Chinese oaths. "Cutting off a cock's head."**

According to an affidavit on record in the Supreme Court, oaths seem still at this period to have been administered according to native fashion.* In one case, entitled "In the cause of Chung Assing," there appears an affidavit, dated the 14th February, sworn to at Macao before Mr. Patrick Stewart, "a Commissioner for taking affidavits in the Supreme Court of Hongkong," "by cutting off a cock's head." It is recorded that the first form of oath practised in Hongkong "was that of cutting off a live cock's or fowl's head," but, judging from the records, this must have been in the earlier Police and other Courts, and it is doubtful if it was ever practised in the Supreme Court beyond the admission in evidence of affidavits which had been declared before Commissioners to take affidavits, of whom in the early days there were several besides the officers of the Court.

**The first form of oath recorded.**

**Cock birds at a premium. Considerable perquisite to Court keepers.**

Cock birds in those days must have been at a premium. The Court-keepers usually kept the birds after decapitation, and it will also be found recorded hereafter that these Court officials, who so unscrupulously devoured the dead birds, were thus afforded a considerable perquisite through the deplorable system of swearing then in vogue.

**Capture of Chui Apo, the murderer of Captain Da Costa and Lieutenant Dwyer.**

The H. C. Steamer *Phlegethon* arrived in Hongkong from Canton on the evening of the 16th February, having the atrocious Chui Apo on board—one of the reported murderers of Captain Da Costa, of the Royal Engineers, and Lieutenant Dwyer of H. M. Ceylon Rifle Regiment, as recorded in February, 1849.† The atrocity and cold bloodedness of the murder, perpetrated in open day within a mile or so of Chuk Chu, created intense excitement at the time. At the Coroner's inquest held on the body of Captain Da Costa (Lieutenant Dwyer's not having been found) a verdict of wilful murder was returned against Chui Apo, seven others named, and other parties unknown. The murder was committed on the 25th February, 1849, and although it was well known that Chui Apo had since mostly resided in or near Canton, he had managed to evade the Chinese authorities, notwithstanding a reward of £100 had been offered by the Colonial Government for his apprehension, and a formal demand made by the

* For previous reference to this subject, see *antè* p. 283.

† See *antè* Chap. XI., pp. 228, 229.

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Governor to the Chinese Imperial Commissioner Su for his delivery. His apprehension was accomplished in the following manner. Chui Apo stated that he had made his peace with the Chinese Government somewhat about the time that the celebrated Shap Ng Tsai* did, (the pirate whose fleet was destroyed by the *Columbine* and *Fury*),†—and, receiving a mandarin's button, was appointed to the command of a portion of Shap Ng Tsai's large pirate fleet; that he was travelling from Foochow to Canton, accompanied by one of his wives, when he was attacked by a gang of desperadoes, who plundered him of all his clothes and money, beat him severely, gagged him, carried him on board a boat which conveyed him to the *Phlegethon*, when he was delivered to the commander. He admitted being implicated in the murder of Captain Da Costa and Lieutenant Dwyer, giving his own version as to the immediate cause which led to the perpetration of the murder. He asserted that he still held office under the Canton Government, and that the Chinese officials were not in any way implicated in his position with regard to his capture. If the assertion that he was an officer of the Canton Government was correct, it seemed more than strange when the language of Su, in reply to Governor Bonham,‡ was referred to: "If he (Chui Apo) be not yet dead, as soon as he shall be taken he shall, of course, be punished with the utmost rigour; there shall be no possibility of his resuming his evil career [*lit.* no sprout, however small (which might again flourish), shall be left.]" Doubts were at once raised locally as to the legality of Chui Apo's capture, and this point, as will be seen hereafter, was carried to the Supreme Court at the hearing of the case, as it was believed to be in violation of the stipulations of the Treaty of the Bogue.

How capture effected. Chui Apo's statement.

Admitted being implicated in the murder.

He held office under the Canton Government.

Doubts as to legality of Chui Apo's capture.

A special Sessions of the Criminal Court was held on Monday, the 10th March, at 11 a.m., for the trial of Chui Apo, and by the desire of the Governor, Mr. Gaskell undertook his defence. The Court-room was crowded with Europeans and Chinese, showing that the excitement was not confined to any one section of the community. The two indictments were conjoined, one being for murder by drowning, and the other the same by stabbing. Mr. Gaskell objected to the trial being gone on with. Under a clause in the supplementary treaty between China and Great Britain, Chinese criminals were to be given up to their own officers and punished by their own laws, according to certain correspondence which Mr. Gaskell said he learnt had never been published. His Lordship held that such a regulation applied solely to offences committed within Chinese terri-

Special Sessions for trial of Chui Apo.

The trial.

Mr. Gaskell's preliminary objection as to jurisdiction.

* See *antè* Chap. XI., p. 260.
† *Antè* Chap. XI., p. 264.
‡ See *antè* Chap. XI., p. 260.

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tory ; the prisoner was indicted for a heinous crime perpetrated upon this island ; and that was altogether a different matter from its perpetration within Chinese jurisdiction.

**Chui Apo had been kidnapped.**

Mr. Gaskell proceeded to observe that the prisoner had been arrested within Chinese territory and, he submitted, unlawfully arrested ; he in short had been kidnapped—the method by which his presence was obtained was in opposition to Treaty provisions.

**The Chief Justice on the point.**

'That,' said His Lordship, 'is a question for His Excellency the Governor to settle with the Chinese Government. I have him here, and will try him.'

Mr. Gaskell furthermore raised the point of the informality in which the prisoner was in custody ; there had been no warrant issued for his arrest, not even a Coroner's warrant.

'What,' said His Lordship, 'has that to do with it ? Here is the man.'

**Plea. Chui Apo stands mute.**

Chui Apo, who was represented to be a man of about fifty years of age, on being asked what he had to say to the indictment, replied, pointing upwards and downwards, that there was a God above and earth below. Mr. Gaskell stated that it

**Provocation.**

was his client's intention to stand mute. As the trial proceeded, it became painfully evident that a certain amount of provocation had been given by the deceased, and that the only question to be decided was, whether such provocation was sufficient to con-

**The Chief Justice's charge to the jury.**

stitute justifiable homicide. The Chief Justice, in his charge to the Jury, specially directed their attention to the fact that the deceased officers were the aggressors, and had given the first provocation, and urged upon them the necessity of divesting their minds of all preconceived notions or bias against the pri-

**Verdict of manslaughter.**

soner. The Jury then retired and after a few minutes' deliberation returned with a verdict of manslaughter. In this verdict the Chief Justice said he entirely concurred ; he would, upon the evidence adduced, have been very unwilling to have had to sentence the prisoner to be hung. Chui Apo,—one of the most notorious criminals that had ever stood at the bar of a Court of Justice in Hongkong —was then sentenced to transportation for life, the trial ending at five o'clock in the afternoon.

**Transportation for life.**

**After sentence Chui Apo inculpated the deceased officers. He threatens suicide. Preferred death to transportation. Despite warnings to Gaol**

After sentence, Chui Apo made a statement in gaol which also inculpated the two military officers as the other witnesses had done. He expressed the greatest repugnance to be transported for life, saying he would have preferred death to transportation, and hinted that he might make away with himself. Despite the warning given to the gaol authorities, that the miscreant might commit suicide, no heed was paid to the warning, and on Wednesday

morning, the 2nd April, Chui Apo was found dead and hanging to the bars of the door of his cell, strangled with a piece of cord which held up his fetters. A Coroner's Jury summoned upon the inquest, returned the simple verdict of *felo de se*, without conveying any censure upon the authorities for neglect of duty, though the matter was not lost sight of by the press, which did full justice to the case under the circumstances.

authorities he carries out his threat. Found hanging in his cell. *Felo de se.*

The verdict of the Jury which found Chui Apo only guilty of manslaughter also came in for public opprobium, and was severely commented upon in various quarters, especially by the friends of the deceased officers both locally and in the press in England, but the concensus of opinion was, that the Jury had but rightly viewed the circumstances of the whole case, and that both the summing up of the Chief Justice and the verdict were in accordance with the facts.* At all events the disappearance of Chui Apo from the scene, whether by the machinery of the law or by his own act, must have been an entire relief to all concerned afterwards. But it was destined that a new complexion was to be put upon the case.

Verdict of manslaughter commented upon locally and in England.

The relatives of the deceased officers determined to put up a tablet to their memory in St. John's Cathedral in Hongkong, the inscription on which related that the deceased had been "*wantonly* attacked and murdered while walking on the sea-side." Unfavourable comments were not unnaturally passed in consequence, notwithstanding which, however, the tablet was duly set up and erected in the south transept of the Cathedral, where it is to be seen to this day.

The tablet in St. John's Cathedral.

Among the passengers, who left on the 27th February by the P. & O. Co.'s Steamer *Malta* were Lady Bonham, who was in bad health, for England, and Major-General Staveley, for Bombay, he having been appointed to the divisional command of the Bombay army at Guzerat. Before his departure he was presented with an address from the leading residents. A selected crew among the officers pulled the General and family off to the steamer, the General having consented to receive this mark of their esteem and respect.

Departure of Lady Bonham and Major-General Staveley.

The Commission of Major-General Wm. Jervois, R.E., to be Lieutenant-Governor of Hongkong, in succession to General Staveley, was published on the 15th April, 1851, and he took

Appointment of Major-General Jervois to succeed

* A long letter unfavourable to the deceased officers, headed "Wat Tyler in Hongkong," appeared in *The London Weekly Dispatch*, of the 15th June, 1851, and was reproduced in *The China Mail* of the 14th August, 1851. *The Illustrated London News* of the 14th June, 1851, also contained an account of the trial of Chui Apo, as well as a sketch of the notorious miscreant, and which was described as a faithful likeness.

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his seat as a member of the Executive Council on the same day.

**Major-General Staveley. His Secretary, Captain Maclean, R.A.**

General Jervois was an old and meritorious officer. His first commission as Ensign bore date 7th April, 1804, and he became Major-General by the brevet of 1846. In February, the Home papers announced the appointment of Captain P. Maclean, 11th Battalion Royal Artillery, as military secretary to Major-General Jervois.

**February Criminal Sessions.**

At the Criminal Sessions of the 15th February, nine cases were set down for trial, four of which had been postponed from former Sessions, but the only one brought forward was that of Chun Achee for larceny. The case broke down and the prisoner was discharged. The Attorney-General then stated that, though duly summoned, not a single material witness in any of the other cases had appeared, and, as he was assured by the Sheriff that there was no probability of their doing so, he asked that the depositions taken before the Magistrate should be received in evidence under Ordinance No. 1 of 1851, passed on the 3rd January of this year. The Chief Justice said he was unwilling to receive them as such, and would only do so in cases of absolute necessity; he would much rather postpone the trials to a future day in order to allow of fresh summonses being issued, at the same time directing the Sheriff to warn the witnesses that unless they made their appearance they would be committed for contempt of Court. The Sessions were then adjourned to the 24th February, the Chief Justice expressing regret to the Jurors for their being drawn away from business to so little purpose, and discharging them.

**The Chief Justice refuses to allow depositions of absent witnesses to be read under Ordinance No. 1 of 1851.**

**The Sessions adjourned.**

**Admission of Mr. J. Tarrant as an attorney of the Court.**

At a sitting of the Court on the 17th March, Mr. Jefferd Tarrant, a brother of Mr. William Tarrant before noticed in this work, an articled apprentice to Mr. William Gaskell, Crown Solicitor and Queen's Proctor, was admitted an attorney of the Court, the Registrar having previously been directed to report on his qualifications.

**Decision of Her Majesty's Consul at Canton against the master of the *Lady Mary Wood* upset.**

**Consular decisions reversed.**

At this sitting also, the Chief Justice remitted a sentence inflicted by the Consul at Canton, whereby he had fined the master of the steamer *Lady Mary Wood* $200, for the infraction of some Consular Regulation relative to the entry of some goods in the manifest, the case being in the nature of a civil suit instituted by the Chinese Customs authorities. It is worthy of remark that the only two cases of importance which had been appealed from the Consular Courts in China to the Supreme Court of Hongkong, namely, the one known as the *Compton Case* previously commented upon,* and the present one, both terminated

* See *antè* Chap. IV., p. 115.

by the Consul's decisions being reversed. The conviction in this case was quashed on the ground of the defective constitution of the Court, there having been no assessors as required by law.

Civil appeals to the Supreme Court of Hongkong from Consular decisions. Consular Ordinance No. 3 of 1847.

Under the Consular Ordinance No 3 of 1847, passed on the 30th September, 1847, and entitled "An Ordinance to authorize Her Majesty's Consular Officers to adjudicate in Civil Actions," after providing for the mode of trial by Consuls and Assessors (section 2), an appeal was allowed to the Supreme Court of Hongkong under section 5 in any suit or action exceeding five hundred dollars, and it was under that section that the case referred to above was heard.*

Governor Bonham leaves for Canton.

On the 31st March, the Governor proceeded in H. M. S. *Reynard* to Canton, leaving Hongkong under the customary salute.

Wreck of the *Lord Stanley* with convicts on board.

On the 1st April, the Barque *Lord Stanley* left this for Singapore with seven Chinese convicts on board. The ship was subsequently wrecked on the Paracels. The convicts constructed a raft and endeavoured to reach the mainland, but in their attempt to do so five were either drowned or starved to death, two of them—Tung Ashing (transported for seven years) and Lee Ayee (for fifteen years)—eventually finding their way back to Hongkong only to be soon after re-arrested by the authorities. Lee Ayee appeared before the Police Court on the 28th July on a charge of cutting and wounding a man with whom he was gambling in a house in the Taipingshan district.

Objection in the Straits Settlements to transportation thither.

In the Straits Settlements at this time exception was being taken to the transportation of convicts to that Colony from Hongkong, the Grand Jury there in their presentment to the Recorder adverting to the impolicy of making Singapore a receptacle for Chinese convicts.

Ordinance No. 2 of 1851 regulating the jurisdiction of the Supreme Court.

On the 5th April, the Legislature passed Ordinance No. 2 of 1851, limiting the jurisdiction of the Supreme Court and other Courts in civil actions between Chinese subjects when originating out of the Colony, to certain cases only.

Arrival of Major-General Jervois.

Major-General William Jervois, K.H., Lieutenant-Governor and Commander of the Forces, arrived in Hongkong by the P. & O. Steamer *Pekin* on the 14th April, in succession to Major-General Staveley. The next day, as before stated, he was duly sworn in and took his seat as a member of the Executive Council of the Colony.†

April Criminal Sessions. Mr. W. T. Bridges admitted

At the Criminal Sessions held on the 15th April, before the commencement of the business of the Court, the Attorney-General moved the Court on behalf of his "friend and fellow-barrister," Mr. William Thomas Bridges, of the Middle Temple, who

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prayed permission to practise in the Colony. The Chief Justice was pleased to express his satisfaction at the prospect of the Colony being favoured with the learned gentleman's services and duly admitted Mr. Bridges. It will be interesting to watch the part which Mr. Bridges afterwards played in connexion with the administration of local affairs and the disgrace attaching to it through his own conduct.

**to the local Bar. The Chief Justice's remarks. The part Mr. Bridges afterwards played in the administration of local affairs.**

At the Sessions mentioned above, six cases were set down for hearing, two of which were postponed. In the other four, not a single conviction was obtained.

**An important point affecting the two branches of the profession.**

At this Sessions also an important point of practice arose affecting the two branches of the profession. On the third case being called, Mr. Bridges, who had but that morning been admitted on the Rolls as a barrister, called the attention of the Court to the inadvisability of solicitors being any longer allowed to continue to appear as counsel for prisoners, as they had theretofore done. He had been informed that Mr. Gaskell, a solicitor of the Court, was about to defend the prisoner without having even attempted to retain the services of a barrister; he begged leave to submit that there being now more than one barrister in the Colony, the necessity for employing solicitors as counsel, which formerly existed, did so no longer, and that, arguing from the analogy of the English Courts, by the practice of which he presumed the Courts here were regulated, it was not part of the functions of a solicitor to appear either in civil or criminal cases if a barrister could be retained. He did not wish that any stringent regulation should be laid down on the subject, as the poverty of parties might prevent them from offering to pay barristers' fees, sufficient to procure their attendance, but submitted that the rule should be, that in every case the barrister should have the option of appearing, and that, if he declined to do so, then solicitors might defend their clients, as heretofore had been the custom. By this argument Mr. Bridges disclosed the fact that, up to this period, the profession had, in a way, or at least as regards the solicitors, been amalgamated.

**Mr. Bridges loses no time.**

**His objection to Mr. Gaskell appearing as counsel.**

**The Chief Justice. Practice of solicitors appearing as counsel stopped.**

His Lordship replied that solicitors had been allowed to plead from absolute necessity, and, as such necessity no longer existed, of course the ordinary practice of the English Courts would be observed.

**Phillips, Moore & Co. v. Arnott.**

On the 26th April, there was a large attendance of the mercantile community at the Supreme Court to hear the trial of one of the most trifling cases ever brought before a special jury. It was that of *Phillips, Moore & Co.* v. *Arnott*. The defendant was master of the merchant ship *Bangalore*, and the action charged that, by his neglect, damage had been done to certain cases whereby their

contents had been rendered unsaleable. The damages were laid at $1,000. Mr. Sterling, instructed by Mr. Pollard, appeared for the plaintiffs, and Mr Bridges, instructed by Mr Gaskell, for the defendant. The case was one of evidence purely. In the course of the case a little by-play between counsel occurred, Mr. Sterling remarking that "it was easier to raise ghosts than to lay them." Mr. Bridges before addressing the Court begged to apologize for any want of respect which he might have exhibited, but the case was one that ought never to have been brought into Court. A verdict for the defendant was returned. This trial, however, had the beneficial effect of opening the eyes of the community to the pernicious system that had until then prevailed of permitting unqualified persons to appear and act as attorneys and solicitors, not only to the serious injury of duly qualified practitioners, but also as affording certain means of annoyance to merchants and shipmasters. Several of the former, in this instance, had been brought down from Canton to give evidence, inflicting upon them, as they alleged, most serious injury at a time when important business was on hand.

Case exposed pernicious system of allowing unqualified persons to act as attorneys.

On the 10th June, the Royal Asiatic Society held a meeting in the room allotted to it on the basement floor of the Supreme Court House* which in those days was the general place of meetings for most things.

The Royal Asiatic Society holds meeting in Supreme Court building.

Under instructions from the Secretary of State it was notified, on the 25th June, that all Crown lands hereafter to be sold in Hongkong would be offered to public competition to the highest bidder for a capital sum in addition to an annual rent, to be previously determined by the Surveyor-General.

Land. Secretary of State directs all Crown lands to be sold at public auction.

The draft of an Ordinance amending the Jury Laws in force was published early in July. By publishing this draft, the Government now revived a custom discontinued from the time when non-official members had been appointed to the Legislative Council.

The Jury Ordinance, No. 4 of 1851.

The petty jurors, feeling aggrieved at the provisions of this Ordinance, whereby they alleged that more labour was thrown upon them than on the special jurors, whose duty had, moreover, now been considerably reduced by the abolition of the Court of Admiralty as a separate jurisdiction, duly addressed a memorial to the Governor upon the subject. The Ordinance was eventually passed on the 10th September and numbered 4 of 1851, most of the objections raised to the draft appearing to have received attention at the hands of the authorities.

The Petty Jurors memorialize the Governor.

In Parliament on the 15th July, upon the vote of £15,500 "to defray the expense of Hongkong" being taken, consider-

Parliamentary vote for

* See *ante* Chap. XI., p. 233.

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able discussion arose, some very strong language being used against the Colony. One speaker, Mr. Clay, stated that he knew many gentlemen anxious for the judgeship of a County Court, but who would nevertheless refuse £3,000 a year at Hongkong, which was then the pay of the Chief Justiceship. The vote was afterwards carried by a majority of twenty-six in a house of one hundred and four.

Hongkong discussed in Parliament.

Mr. Clay, M.P., on the Chief Justiceship.

The Governor goes to Canton under instructions.

Immediately after the arrival of the mail from England, the Governor proceeded to Canton, in consequence of instructions received from the Foreign Office on matters pertaining to the department of the Superintendency of Trade. During this month, the records show that the Chief Justice laboured under a severe attack of illness, but that yet, with his usual inimitable energy and patience. he continued frequently to take the Bench and hear cases to the end.

Illness of the Chief Justice.

Death of Dr. Gutzlaff. His career.

Dr. Gutzlaff, Chinese Secretary to the Government, died in Hongkong on the 9th August, 1851, at the age of forty-eight. This official, who was a Pomeranian by birth, seems to have occupied himself as a missionary to the Chinese until the breaking out of the war, when, his services as interpreter being in request, he was induced to take office as interpreter under the British Government, first as interpreter to the Plenipotentiary, then as Magistrate at Ningpo. and afterwards at Chusan. On the settlement of the Treaty of Nanking and the establishment of the British Government at Hongkong, he was made assistant Chinese Secretary, and, on the death of Mr. J. R. Morrison in August, 1843,* he succeeded him as Secretary. In this position he continued till his death.

The fortune he left.

The salary was a considerable one, and enabled Dr. Gutzlaff by frugality and profitable management, to leave, it is said, a fortune of £30,000, as little in accordance with his original expectations as with the professions of poverty in which he was at all times, it is alleged, wont to indulge. He was three times married, but left no family. Dr. Gutzlaff had only returned from leave of absence in Europe, on the 20th January of this year.†

Ordinance No 14 of 1845. Abatement of nuisances. An assault committed to obtain a judicial decision.

An amusing incident now occurred in which the Chief Magistrate, Mr. Hillier, seems to have taken an important part. Complaint of the nuisances caused by the unseasonable hours at which Chinamen were permitted to carry on their noisy trades had been for some time frequently reiterated, although no attention had been hitherto paid to them. Owing to the scarcity of houses away from the business portion of the town, many

* See Introduction, *antè* p. 29.

† For previous reference, see *antè* Chap. XI., p. 256.

of the principal residents lived in the Queen's Road, and, as was felt, unless severe and stringent measures were taken to put down the tinkering and hammering which the Chinese seemed to be peculiarly privileged to enjoy, it would certainly become next to impossible for the Queen's Road people to continue their residences in this portion of the town much longer. Ordinance No. 14 of 1845 undoubtedly was intended to give to the Police the power of abating all nuisances. There was also another way of looking at the matter by the light thrown on it by the leases under which property was, and is still, held in this Colony, one clause of which ran as follows :—

Clause in leases under which property held in the Colony.

"And further that the said A. B. C., their executors, administrators, and assigns, or any other person or persons, shall not, nor will during the continuance of this demise, use, exercise, or follow, in, or upon the said premises or any part thereof, the trade or business of a brazier, slaughterman, soap maker, sugar baker, fellmonger, melter of tallow, oilman, butcher, distiller, victualler, or tavern-keeper, blacksmith, nightman, scavenger, or any or either of them, or any other noisy, noisome or offensive trade or business whatever, without the previous licence of Her said Majesty, her heirs, successors, or assigns, signified by the Governor of the said Colony of Hongkong, or other person duly authorized in that behalf."

Obnoxious trades.

This was certainly sufficiently stringent to prevent any of the many trades mentioned from being carried on to the annoyance of the public, but a strange coincidence now occurred which enabled the Magistrate to express an opinion upon the application of clause 12 of section 2 of Ordinance No. 14 of 1845, as to the abatement of the nuisance complained of, though probably if it had been sought to abate it under the clause of the lease given above, a *Qui Tam* action by the Attorney-General would probably have been necessary. A resident, Mr. Strachan, on the 12th August, assaulted a Chinese shopman in Queen's Road and alleged that he had done so with "the express object of obtaining a ruling of the Police Court upon the powers of Ordinance No. 14 of 1845, as to the abatement of the nuisance caused by the noises in Queen's Road." This was verily a strange though dangerous mode of "ascertaining the law" upon any given point, though the complainant alleged that he was assaulted because he had told the defendant that "some silverware after which he had inquired" was not ready. On the 19th August the case came for hearing before the Police Court, the defendant stating that "the cause of his beating the man was, that, having very often complained to the Police for the purpose of obtaining an abatement of the nuisance made by plaintiff and others who carried on their noisy trades through the greater part of the night which prevented him from sleeping, and as the Police had stated they were powerless to act, he had adopted the plan *of giving one of them a thrashing that the nuisance might be brought prominently under the*

Mr. Hillier's opinion upon application of clause 12 of section 2 of Ordinance No. 14 of 1845.

The evidence of the defendant who committed the assault.

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*Chief Magistrate's notice.* He thought that under the 12th clause of the second section of Ordinance No. 14 of 1845, it was the duty of the Police to abate such nuisances." The clause in question reads as follows :—

"12. Every person who in, near, or adjoining any public road or thoroughfare, shall wantonly or unnecessarily blow any horn, beat any gong or drum, or make any other noise calculated to annoy or alarm any person, or to frighten any horse or other animal: Provided always, that nothing herein contained shall be construed and extend to any religious procession or festival, for the due celebration of which the consent of the Chief Magistrate of Police has been obtained."

Defendant fined.

Mr. Hillier did not agree with Mr. Strachan's reading of the clause, and thought that it was a funny way of obtaining justice by beating an unfortunate shopman who was only obeying his master's orders; that the party to have been beaten, if any, was the master; and that the prosecutor seemed to have been beaten because he was a Chinaman Defendant, after a further lecturing by the Magistrate, was fined $15 and cautioned as to his future conduct. It may not be out of place in connexion with this matter to point out that General D'Aguilar's Ordinance alluded to in 1844,* only provided for the suppression of noises made by watchmen, and had nothing to do with other nuisances.

Malay and Javanese law of homicide.

Case of Selico, who murdered his wife.

The Coroner held an inquest on the 19th August on the body of a Malay woman who met her death at the hands of her husband, a seaman named Selico. According to his statement, it appeared that he and deceased had been married for nearly a quarter of a century, and that a few days before the murder, he had consented to her leaving him to live with a man named Kassim, such practices, he alleging, being customary with people of his country. Hearing that instead of remaining with Kassim, his wife had been in the habit of rambling from house to house, he sought her, and, subsequently finding her in Kassim's dwelling, stabbed her, when she died almost immediately. The prisoner appeared to have thought himself perfectly justified in what he had done, and it would appear that the Jury agreed with him, for it is recorded that they returned the following curious verdict :—

Coroner's inquest. The jury find justification according to usage of Malays and Javanese.

"Wilful murder against Selico by English law and upon the verdict of his own confession. But the Jury desire to add that on the testimony of the man himself and of the witnesses, both male and female, as well as of the interpreter and one of their own body, the deed under the circumstances was justifiable according to the usage of the Malays and Javanese."

At the October Criminal Sessions, he

Upon what facts or evidence of native law, this clever and cautious Jury returned their verdict cannot now be traced, but suffice it to say that, at the Criminal Sessions held on the 15th

* Ordinance No. 17 of 1844—see *antè* Chap. II., pp. 56-58.

October, Selico pleaded guilty of the charge and was sentenced to death. Ch. XII § II. 1851. pleads guilty and is sentenced to death.

On the 25th August, Mr. Hillier, the Chief Magistrate, left for Shanghai on short leave of absence. Departure of Mr. Hillier for Shanghai.

By Ordinance No. 4 of 1851, passed on the 10th September, Ordinances No. 7 of 1845 and No. 4 of 1849 were repealed, and other provisions made for the regulation of juries in civil and criminal cases. Ordinance No. 4 of 1851. Ordinance No. 7 of 1845. Ordinance No. 4 of 1849.

As a striking instance of the working of the law of arrest for debt at this time, and of the manners and customs of the Chinese, the case of Chun Atee *v.* You Tsoi formed the subject of comment. The defendant, a Chinese girl of eighteen, for an alleged debt due on a promissory note, was arrested and committed to prison. This was one of those ordinary cases of pledging a female child in payment of a debt due. The case was also illustrative of the mode of swearing native witnesses in the early days of the Colony. At the suit of the plaintiff, an old Chinese woman, the defendant was arrested and committed to prison for an alleged debt of $400.50. In 1845 the mother of the girl had borrowed $120 from the plaintiff at Macao. At compound interest this sum accumulated to $355.50, for which sum, together with Court fees, amounting to $40 or $50 more,—a debt the girl could never have paid,—she was arrested and sent to the debtor's gaol. Under Ordinance No. 9 of 1845, section 1, an infant could sue or be sued on the summary jurisdiction side of the Court. Under this law the defendant was originally brought before the Registrar of the Court, and upon the plaintiff burning a bit of joss paper and declaring that the girl defendant had assumed as her own her mother's debt, and had promised, and undertaken by word of mouth to satisfy and discharge the same, this evidence being supported by two other Chinese women, she was committed to prison. The law of arrest and the manners and customs of the Chinese. Chun Atee *v.* You Tsoi. The defendant, a girl, pledged for debt due. Chinese oaths. Ordinance No. 9 of 1845, s. 1. On plaintiff burning 'a bit of paper' in support of declaration, defendant committed to prison.

The records show that the case afterwards came before the Chief Justice, Mr. Hulme, on the 3rd October, Mr. Gaskell appearing for the plaintiff, when the defendant denied that she had ever promised to pay the money, but admitted having 'pledged her body.' In replication, Chinese custom was relied on as warranting the transaction, and rendering the defendant liable to pay the money for which she was pledged. His Lordship, after further arguments, cut the matter short by telling the parties to settle it amongst themselves, as he would have nothing to do with it. Similar other cases *contra bonos mores* and suggestive of the Chinese character seem to have taken up the time of the Court at this period, the late Police Court interpre- Defendant before Chief Justice denied 'pledging her body.' Chinese custom warranting the transaction. Cases *contra bonos mores* suggestive of Chinese character.

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ter Tong Achik, referred to in this work in December, 1850, as having been objected to by the Jury, and who, it would seem, was intimately connected with Chinese brothels and had now been dismissed the public service, figuring prominently in some of them.* On the 14th October, the Government advertized for "an interpreter of the Chinese language" for the Chief Magistrate's Court, at a salary of £125 a year.

The noted Police Court interpreter Tong Achick.

Police Court interpreter advertized for.

The Criminal Sessions of the Supreme Court began on the 15th October. This Sessions was remarkable as the first in which the new jury system was brought into operation. Ordinance No. 4 of 1851 had been passed so lately that there had barely been time to make a list and pass it through the required formalities, the document having been received back from the Governor and Legislative Council on Saturday, the 11th October, the last day for issuing summonses to the jurymen. The moment the list was received, a ballot was taken, and, singularly enough, one of the evils—that of a number of jurymen from the same firm or place of business being called together to sit in a jury—which the ballot was designed to cure or mitigate, was the very first that it developed in the strongest manner, the names of *seven* in one firm being actually drawn. There were several cases of interest tried at these Sessions, one deserving especial mention being that of two Chinese Constables named Chun Ayong and Low Achoi, charged with malfeasance by laying brothels under contribution for the benefit of the Chinese members of the Police Force,—a system of extortion of long standing.† These men, being found guilty, were fined $50 each and sentenced to twelve months' imprisonment with hard labour. A notable fact connected with these scoundrels, who, it may be added, confessed that they had acted upon the orders of their Sergeant, was, that at this very Sessions, upon their own unsupported testimony, they had obtained the conviction of a Chinese woman named Chow Sam Mooey for keeping a brothel, but whose sentence of twelve months' imprisonment with hard labour was fortunately shortly after remitted by the Governor, after representations had been made to him upon the subject. Another woman arrested after the conviction of these men, and charged at the December Sessions with a similar offence as the previous woman, out of pure spite, it was believed, because she had been instrumental in exposing the Police and obtaining the conviction of the Constables mentioned above, was discharged by the Jury who accompanied their verdict with the expression of a regret that the case should ever have been brought before the Court, the Chief Justice fully agreeing.

October Criminal Sessions.

The new Jury Ordinance No. 4 of 1851 brought into operation.

Several jurymen summoned from the same firm.

Case against Chinese Constables for extortion by laying brothels under contribution.

Extortion of long standing.

The sentence.

Their confession.

Case of Chow Sam Mooey for keeping a brothel.

Governor remits sentence obtained on the testimony of the Constables.

The jury discharge another similar case.

Rider to their verdict.

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* See *antè* pp. 293, 294.

† See *antè* Chap. III. § II., p. 80.

1851.

On the 29th October, Sir George Bonham left for Shanghai in H. M. S. *Salamander*, accompanied by the Colonial Secretary, Major Caine, and returned with the latter to Hongkong on the 24th November, the Government in the interim having been administered by Major-General Jervois, the Lieutenant-Governor.

Governor Bonham proceeds to Shanghai.

The records during this month again show the Chief Justice as having laboured under illness, his previously weak health* suffering further injury from a rather lengthy Criminal Sessions during the progress of which, the Court-hall was crowded to excess with the worst class of Chinese, nearly a third of whom were represented as being prostitutes interested in the brothel cases heard at that Sessions. Mr. Sterling, the Attorney-General, also appears to have acted for the Chief Justice on the summary side of the Court during this month, the magic words "I'll dismiss this case without prejudice" being frequently attributed to him.

Illness of the Chief Justice.

Crowded state of Supreme Court hall.

Mr. Sterling acted for Chief Justice on the summary side of the Court.

Magic words attributed to Mr. Sterling.

On Saturday, the 1st November, a taxed bill of costs was brought before the Court for revision, and as it was a matter of importance to the lawyers, they were all in attendance. The cause of complaint arose from the fact that there were now two counsel in the Colony, and that more copies of documents were required than formerly when the business of the Court was wholly conducted by solicitors; it also appeared that the fees allowed to counsel were not considered sufficient and that twenty-five dollars were now being asked, for what was heretofore only charged five. The difference, if not allowed in the taxed bill of costs, of course, was to be considered as costs between attorney and client, which costs, one attorney said, his clients did not like to pay, though they were quite willing to pay everything allowed by the taxing master. In the course of the arguments, the Attorney-General remarked that legal gentlemen who came out here, having no salaries from Government, ought to be well paid for their services, to recompense them for living in such a climate as that of Hongkong. Eventually, the matter was remitted to the Registrar for the purpose of drawing out a scale of counsel's fees, which scale was to be submitted to the members of the bar for their opinion, but no such scale, if ever framed, is now traceable in the records.

A bill of costs for revision by the Court.

All the lawyers in attendance.

Complaint arose because previously no counsel in the Colony.

Fees allowed to counsel not considered sufficient.

Attorney-General of opinion that counsel coming to Hongkong, having no Government salary, ought to be well paid.

Matter remitted to Registrar.

The question of Chinese oaths was now raised before the Court on a trial for perjury. This question had been long before the public,† though certainly not brought forward so prominently as on this occasion, it having had the effect of putting a stop to the Sessions, exactly in the middle of the cases, as the Attorney-General naturally declined to go

Chinese oaths.

Trial for perjury.

* See *antè* p. 304.

† For previous references, see *antè* pp. 283, 296.

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on with a Jury who entertained such sentiments as were then expressed. The matter came forward on Monday, the 15th December, when the Criminal Sessions opened with eighteen cases for trial, and after nine of these had been tried, the Sessions suddenly came to a close on Wednesday afternoon, the 17th, the remaining nine cases being ordered to stand over. A Chinaman being charged with forgery of an opium order, admitting his guilt, was condemned to two years' imprisonment. The false witness who had sworn to the genuineness of the order was next placed at the bar, and after long explanations between him and the interpreter, he in effect pleading guilty to perjury, was sentenced to a shorter term of imprisonment. Before the prisoner was removed, the Jury drew the Chief Justice's attention to the unsatisfactory manner in which Chinese witnesses were sworn. It was the impression, they said, not of themselves only, but of every one who had been present during trials of Chinese cases, that the witnesses were sworn in a way which not only appeared to foreigners absurd, but was laughed at by the Chinese themselves; and it was not improbable therefore, were a case like the one just disposed of by the man's own confession to come to trial, that the Jury might acquit the accused on the ground that he had never been truly sworn.

The jury and the unsatisfactory manner in which Chinese are sworn. The attitude of the Attorney-General.

A false witness pleads guilty of perjury.

Jury criticize mode of swearing Chinese.

The Chief Justice upon the practice. The jury express their opinion.

The Chief Justice expressed his satisfaction that the subject had been broached by the Jury, for though the matter might have been remarked upon out of doors, it had never been brought before him in Court. The present mode of swearing Chinese had been practised since the year he arrived, and he should like to know what substitute was suggested. A juryman replied that it would be proper to consult persons well versed in the customs of the Chinese. He believed, however, that every one agreed that the present mode was not at all binding upon the conscience of a Chinese.

A juryman upon "the cutting off of a cock's head."

Another juryman observed that the ceremony of cutting off a cock's head before a joss was in use in the early days of the Colony,—why it was given up he did not know, but he did know that a Chinaman under that ordeal would hesitate to swear to what he had testified to freely in the other mode.

Mode in vogue at this period. Paper burning.

It would appear that the custom at this time prevalent in the Hongkong Courts was to swear the Chinese in the following manner. A sheet of yellow paper about eight inches by six, bearing certain printed characters, purporting the intention of the witness to speak, in the matter about which he was to be examined, the whole truth and nothing but the truth, with the date and witness's name inserted by the interpreter's attendant

was given to the witness who then burnt it, at the same time assenting to the interpreter's charge that he would *chu ching kong*, *i.e.*, "make true evidence."

Mr. Caldwell, the Chinese Interpreter, upon paper burning as an oath.

To His Lordship's question, Mr. Caldwell, the Chinese Interpreter, said he did not, speaking generally, think this form of oath was binding, especially as regards the inscription on the paper used which, he said, had been borrowed from Singapore; and that some time before he had addressed the Chief Magistrate upon the point and indicated what course he thought should be adopted.

The Chief Justice quotes an authority.

The Chief Justice here quoted a case tried before Baron Gurney in which a Chinese was sworn by breaking a saucer, the interpreter on the occasion certifying to that being the mode usual in China. Another case was referred to, as to whether that mode of swearing was to be considered good, to which the witness did not object.*

A juryman upon the point.

A juryman here asked if the report stated who the interpreter was whose authority was taken on the occasion, and finding it was not given, went on to say "it was very improbable that fifteen years ago any one could be found in England qualified to determine the point"; and that at all events those who had had the advantage of practical knowledge would not be disposed to have it set aside by an anonymous authority.†

Various forms of oath in use amongst Chinese.

The Chief Justice then desired Mr. Caldwell to explain to the Court what form he thought *would be* the most binding. To this it was replied that there were various forms in use among the Chinese—there was the cutting off of a cock's head, and the breaking a basin, either before a joss or under the bare canopy of heaven; there was also the burning-paper form, but to render it fully binding it was necessary to fill in the names of the swearer's progenitors, the exact date and hour of nativity, and several other minutiæ.

The evidence of Ching Kum Cheong upon the point.

At the suggestion of one of the jury, a respectable and well-informed Chinaman named Ching Kum Cheong was called in and examined upon the point. Upon inquiry the following was elicited from him:—

"In Chinese Courts it is not required to swear, for they know that the people do not care for perjury if they can gain the cause. The Magistrates

* See the case of Matthyssons *v.* Matthyssons, *antè* Chap. III. § III., p. 99, and references there given.

† *Rex* v. *Alsey and another* (Sessions Cases for 1804 (first Session), p. 62), seems to be the earliest authority upon the question of Chinese oaths, and lays down the breaking of a saucer as the proper mode of swearing amongst the Chinese. The person upon whose statement this proposition (a very questionable one even in these days,—except as regards Secret Societies) is founded, is also given. This case will be found referred to by Mr. Anstey in his interesting paper upon "judicial oaths as administered to heathen witnesses" in the second volume of this work, Chap. L.—J. W. N. K.

Ch. XII § II. 1851.

only make the people confess the truth by threatenings and tortures, and then compare the confessions together, to decide the case; or they would find out the truth by arts and private inquiries without calling for witnesses.

"The common way of swearing a man among the people themselves, is to make him say his oath standing or kneeling in the open air, or to make him write out his oath on a yellow paper and burn it, either in the open air or before some idols. Besides these forms there are still various other ways, such as to cut off a cock's head, used only by thieves and pirates, and the oath used by the Triad Society, to break a cup or an arrow, to blow out a lamp, etc., meaning that if his words are false, his conduct deceiving, or if he will not perform his promises, he shall be like that thing—broken, perished.

"In the English Courts here, the parties brought in are presented a yellow paper with an oath on it; they are to burn it, but they probably do not know what is written therein, but the Chinese would make the parties write it out of their own head; if they cannot write, then they are made to swear by mouth."

The Attorney-General suggests a simple affirmation.

The Attorney-General remarked that as it was very evident there were various forms, some of which might be deemed binding by some, and not so by others, in his opinion it would be the best plan to take from a witness his simple affirmation that he would tell the truth, and guard against his perpetrating the contrary by the enactment of some severe and appropriate punishment.

No oath in Chinese Courts.

Further, he was advised that, in Chinese Courts, no oath whatever was administered to those giving evidence; and it was to be presumed that the native Courts acted in such way as was most suitable to the genius of the people.

The Attorney-General objects to a juryman on account of his views on the subject.

The Court was about to proceed with the business before it, when the Attorney-General stated that from what had fallen from one of the jurors in the course of the discussion, he objected to his sitting any longer on the Jury, as he believed he could not act impartially, though it was felt that the juryman in expressing himself as he had done as stated above, he had expressed only the general opinion of his fellow-jurors.

The Jury express a wish that point in dispute be fully decided.

The Jury now expressed a wish that before any more cases were brought on for trial, the point in dispute should be fully decided.

The Chief Justice expresses thanks to Jury for bringing matter forward.

The Chief Justice said it would be necessary to adjourn the Sessions until the matter could be considered and determined on, and the Jury having inquired if they were discharged, His Lordship replied: "Yes, and I feel obliged to you for having brought this matter before the Court." The Court was then adjourned and a Sessions for the termination of the business fixed for the 5th January, 1852.

Mode of swearing Chinese witnesses in

The following remarks from the appendix to *The Hongkong Almanack* for 1848 will be found interesting and important as bearing upon the subject of Chinese oaths, and as disclosing

the mode of swearing Chinese witnesses in the early days of the Colony :—



1851. early days disclosed.

"Philanthropists of every creed look with an eye of pity on that moral degradation—a disregard of truth—which is the peculiar characteristic of the Chinese as a people ; even simple-minded worldly interest has to deplore the impracticability of doing business, out of the common run with men who know not the value and importance of an oath, and the efforts of the Christian missionary in China, in teaching the reality and attributes of a Godhead, are hailed with thankfulness and appreciated, even by those whose general walk in life is otherwise than the most correct. In Chinese courts of law and judgment, where the character of the people is fully understood, no oath whatever is administered to witnesses. In order, however, to meet the requirements of English law, an *attempt* has been made to introduce a species of Chinese oath in our various Courts. The first form practised here was that of cutting off a live cock's or fowl's head ; a considerable perquisite was afforded to the Court-keepers by this system, who unscrupulously devoured the decapitated bodies. A cheap form of oath consists in breaking a basin into pieces, intending thereby to symbolize how anxious is the swearer, (?) that if he does not tell the truth, his body shall be as unceremoniously smashed into its original dust. To those who fancy that they possess no more soul than a piece of potter's ware, this method of swearing is doubtless highly sensible and appropriate ; and it was probably under the impression that the Chinese entertain such feelings, that the erudite Lord Brougham was induced to countenance this form when made in the House of Lords at a recent examination.*

The form of oaths at present in use is considerably cheaper in practice than either of the foregoing. Printed forms, on sheets of yellow paper about eight inches by six inches, are kept at hand by the interpreters. If the witness can write, he fills in the blank himself, or the interpreter will do it for him, to the effect that "so and so" is now in Court for "such and such a purpose," that he will "speak the truth, the whole truth, and nothing but the truth" without fear or prevarication, but, instead of finishing by asking his God (his Gods or his ancestors) to help him in his resolve *à l'anglaise*, the form finishes by simply stating that the "Divine heaven" or, as the Chinese understand it, "Court of heaven" witnesses this attestation [*Sun tien kàm chut*], the paper when filled in and read over to the swearer is then burnt by the flame of a lamp. The particular "Gods many and Lords many" who constitute the said Court of heaven, it is presumed, vary in idea according to the theocratic knowledge of the swearer, but it is a notorious fact that, if after days of incessant worship a god or idol takes no (fancied) notice of his Chinese worshipper's application, then he (the said idol) is remorselessly battered and burnt *sans cérémonie*. It but follows as a natural sequence, that the supposed powers of each god being of a doubtful nature, the whole Court, as a body, obtain, in anticipation, only a small degree of respect or fear ; and whole reams of note paper may be burnt without adding the slightest value to any evidence.

This form of oaths (but on an extended scale) is said, however, to be practised in temples at Nanking. An intelligent Chinese, in reply to a question of the writer, said "that there were many educated men who would not tell an untruth after burning the paper," but he added that the bulk of those who did so, cared but little for the obligation it was desirous should be obtained, and as a general axiom, the custom may be looked upon as useless. In Chinese Courts, the truth (?) was elicited only by squeezing [torturing] and by the infliction of the bamboo.

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* See *Matthysson's Divorce Case, antè* Chap. III § III., p. 99.

Ch. XII § II. 1851.

burning as a mere farce; but we have yet to be advised of a better form of affirmation; and it is to be supposed that if any one would object to the paper-burning mode, those Chinese who were the parties interested, would be the first to point out its futility. But no objection, that we know of, has ever been raised by Chinese on the point; with whom in future, however, it would be perhaps as well to allow the privilege of indicating in what form he or she would wish the oath to be administered to a deponent."

January Criminal Sessions, 1852. The Chief Justice to the jury on the subject of Chinese oaths. Correspondence thereon. Mr. Caldwell upon the subject.

At the Criminal Sessions held on the 5th January, 1852, after the business of the day was over, before adjourning the Court, the Chief Justice said he wished to make some remarks to the Jury on the matter of Chinese oaths. The matter having been left to him, he had in the interim requested Mr. Cay, the Registrar, to address Mr. Caldwell on the subject, informing him that the oath he considered most binding should be the one used. To this communication, Mr. Caldwell had made the following reply:—

Victoria, 30th December, 1851.

Sir,—I have the honour to acknowledge receipt of your letter, informing that the Honourable the Chief Justice has desired that all Chinese witnesses shall be sworn in such manner as I shall consider binding upon their consciences; I beg in reply to offer a few remarks for the information of His Honour.

I think that cutting off a cock's head would be the form of oath likely to elicit the greatest amount of truth from a Chinaman, but—

1. This oath, to be administered in a manner at all binding, must be taken before the patron idol of the swearer; but Chinese have different idols, and those idols are feared most which are supposed to be able to punish most, therefore an oath before one idol would not be so much dreaded as an oath before another idol.

2. The Chinese have no belief in a God or future state, as we understand them, therefore it would be a superstitious, and not a religious, fear which would restrain them. Most of them believe in idols possessing powers superior to men, and believe that after death they will inhabit the bodies of brutes or of other men.

3. The idols they invoke are not all considered to hate vice, inasmuch as pirates constantly invoke their assistance in their piratical expeditions.

4. Lying in the abstract is not considered a sin among Chinese. If a prosecutor believe the defendant to be guilty, he will swear to any false collateral facts, which he may consider necessary to prove the guilt, and he will not scruple to cut off a cock's head for this purpose.

5. The fear of the oath is more to be attributed to a superstitious dread of some consequences attendant on the act itself in this world, than to any fear of punishment in the world to come. I do not think they have any fear of punishment in a future state: they may think that they will be unfortunate here.

6. This superstitious fear of performing the act would probably deter most respectable Chinese, from taking the oath in small matters. For the recovery of a small debt or the punishment of a small crime, such persons would not take an oath. Thus small debtors and small criminals would

I think upon the whole circumstances, it would be better to abolish judi- Ch. XII § II.
cial oaths altogether, particularly as it is a custom foreign to the ideas of 1851.
Chinamen, who never to my knowledge take oaths in their own courts of laws.* I believe that generally, if it were explained to the witness before giving his testimony that he would be severely punished if he stated that to be true which was false, or that he had seen that which he did not see, this would be as effectual a preventive of lying as the administration of any oath whatever. The fear of immediate punishment would be a much greater deterrent than the fear of future misfortune or the reproaches of conscience—the consciences of Chinese being remarkably corrupt.—I have the honour to be, Sir, Your most obedient Servant,

D. R. CALDWELL.

ROBT. DUNDAS CAY, Esq.,
*Registrar*, Supreme Court.

This, the Chief Justice added, not being sufficiently satisfactory to his mind, a second letter was sent to Mr. Caldwell from Mr. Cay, by his order. To this Mr. Caldwell had replied as follows:— Further letter from Mr. Caldwell upon the subject of Chinese oaths.

Victoria, 3rd January, 1852.

Sir,—I have the honour to acknowledge receipt of your letter of the 31st ultimo, informing me that the Honourable the Chief Justice has directed that Chinese witnesses be sworn in the manner which I have 'said is likely to elicit the greatest amount of truth from a Chinaman.'

In reply I have only to refer you to my letter which you have quoted, in which, in qualification of the assertion on which the Chief Justice seems to have grounded his order, I have attempted to show that the difficulties attending such a course would be almost insuperable, and that the practice itself would probably be injurious to the administration of justice.—I have the honour to be, Sir, Your most obedient Servant,

D. R. CALDWELL.

ROBT. DUNDAS CAY, Esq.,
*Registrar*, Supreme Court.

There is absolutely nothing in the records at this date to show that any steps were taken upon this correspondence or that any order was made upon it. On the contrary, the records of the time show that the old paper-burning form was still adhered to, and was doubtless then considered as good a mode as any that could be devised for binding a Chinese conscience. As will be seen hereafter, it was not until March, 1860, that the present mode of a witness simply making a declaration, was introduced, by the passing of Ordinance No. 2 of 1860, a suggestion thrown out many years before, as may be gathered by the discussion set out above, by Mr. Sterling, the Attorney-General, viz., that a simple declaration, to the effect that a Chinese witness shall tell the truth, be considered sufficient, and that the declaration shall put the witness in the power of the law if he commits perjury.† No change and system in force adhered to. Simple declaration introduced by Ordinance No. 2 of 1860.

* It was probably due to this suggestion that the Legislature provided in Ordinance No. 15 of 1856, that no heathen witness be sworn in any Court "unless the said Court or person shall think fit to direct"—(sec. 4)—see also Ordinance No. 7 of 1857, sec. 5, where the same section is re-enacted; and Ordinance No. 6 of 1855, sec. 19, where power was given to the Court to permit Chinese, instead of being sworn, to make a statement

1852.

Piratical lorchas in command of Europeans and Americans.

Rumours of piratical lorchas in the neighbouring seas, commanded by Europeans and Americans, now left no doubt as to their existence. For years past, the outrages of such lorchas had occasionally been animadverted upon and reported at the British Consulates, upon complaints by the Chinese who had been led to believe that they were amenable to British authority. But our Government was, of course, unwilling to acknowledge the discreditable connexion, even in cases where it was alleged that the vessels had been fitted out or were commanded by Hongkong residents, and as some of them were undoubtedly Portuguese, the Macao Government were left to deal with them, although it was known that three or four of such lorchas with Englishmen in nominal, if not actual, command, had for some time been scouring the coast, robbing traders and fishermen, and otherwise committing more extensive piracies on valuable junks. Some of these lorchas had even come into Hongkong, disposed of their goods, refitted, and then again left on some other scouring trip, without even arousing the suspicion of the authorities.

Government unwilling to acknowledge discreditable connexion.

The local authorities as regards the Macao Government.

Extensive piracies.

Horrible murder of a Portuguese naval officer. The facts. The Portuguese boat *Adamastor*.

Early in August, 1851, particulars of a horrible murder committed on the person of a Portuguese naval officer who had boarded one of these boats, reached Hongkong. It appeared that early in June, 1851, the armed Portuguese boat *Adamastor*, in order to make inquiries into repeated complaints against some of the lorchas in question, had sailed from Macao for the northern ports, and on her way fell in with two lorchas and several junks at anchor close to the island of Mi-aow near Ningpo. The Portuguese officers at once resolved to visit the boats, for which purpose the *Adamastor* was brought to anchor close to them, and one of the officers, Lieutenant José Antonio Pereira de Miranda, immediately despatched on board one of the lorchas which had shown the English flag. The lorcha was found to be one of those which, originally fitted out to convoy Chinese traders on the coast, and still professing to be so employed, were and had long been more a terror than a protection to native craft. She was in the command of an Englishman named William Fenton, with a Chinese crew, and no papers were discovered except a letter of old date from Mr. Bird, the British Consular Agent at Whampoa, enclosing a warning to Fenton from Her Britannic Majesty's Consul at Canton, that it would be necessary to report himself and obtain renewed authority from the Governor at Hongkong. Fenton was accordingly arrested and taken to the *Adamastor* to be conveyed to Shanghai together with his lorcha, but on his request to be allowed to return to his vessel on the pretext of getting his clothes, the commander of the *Adamastor*, Lieutenant Vicente F. Barruncho, imprudently allowed him to do so in the

A piratical boat flying the English flag commanded by an Englishman.

Wm. Fenton, the pirate.

Fenton arrested by Lieutenant Miranda, of the *Adamastor*.

Caldeira, a passenger, who spoke English, so that he might act as interpreter, the Commander of the *Adamastor* being also of the party. They all left in a sampan* manned by four unarmed sailors, Lieutenant Miranda having orders to bring with him also a Chinaman said to be the son of the owner of the lorcha. On arriving on board, Lieutenant Miranda immediately ordered the Chinaman in question to get into the sampan, but received a positive refusal to do so, and as it became necessary to use force, the officer laid hold of him by the arm and gave him a push towards the gangway. At this juncture, Lieutenant Miranda was suddenly surrounded by thirty armed men, the crew of the lorcha, and, on trying to draw his sword, was seized by both arms and stabbed to the heart with a Chinese dagger. On falling, his body was thrown into the water and during the bustle of the moment, the sailors who had accompanied the Lieutenant on board, jumped overboard and escaped with their lives, except the master of the *Adamastor* who was drowned. Mr. Caldeira was driven by spears into the sampan but was left alive though badly wounded. The *Adamastor*, on the attack being noticed on board, fired on the pirates, who immediately set sail, and their boat being faster than the *Adamastor*, soon got out of sight, thus leaving unavenged the treacherous death of Lieutenant Miranda and the affront upon the Portuguese flag. But the hand of Providence was at hand, and William Fenton was sooner or later to receive retribution. As will hereafter be seen, he fell into the hands of the authorities, not through any extraordinary exertion on their part, but simply by pure accident.

Lieutenant Miranda stabbed by the pirates.

His body thrown into the water. The fate of those who accompanied him.

The *Adamastor* fires on the pirates who sail away with Fenton.

Hand of Providence at hand.

After escaping from the Portuguese, Fenton continued to be engaged in committing piracies on the coast, until at last, being overcome and captured by some Chinese junks which he had attempted to plunder,—he himself first jumping overboard to escape being killed,—he was brought to Hongkong by some Chinese on the 8th December, 1851, and handed over to the authorities, when, of course, he gave different versions as to his capture. Tried at a special Sessions of the Criminal Court on Monday, the 5th January, 1852, on a charge of 'accessory to murder,' the Jury, by a unanimous verdict, found Fenton not guilty; though by a strange coincidence, if not fatality, three out of four Chinese charged with piracy with violence at this very Sessions were found guilty and sentenced to death. Naturally enough Fenton's acquittal gave vent to severe comment, and aroused the indignation of our Portuguese friends, who had sent an officer of the *Adamastor* over to identify Fenton. The authorities, upon pressure being brought to bear no doubt, determined that Fenton should be tried again upon some other

Fenton continues his piracies.

His capture by Chinese and arrival in Hongkong.

Found not guilty of 'accessory to murder,' while several Chinese charged with piracy are sentenced to death.

Indignation of the Portuguese.

* A Chinese boat—lit. 'three planks.'

Ch. XII § III. charge arising partly from the facts elicited at his trial, and partly from his own admissions, and accordingly on the 15th April this year (1852), he was arraigned on a charge of 'consorting with pirates,' was found guilty, and sentenced to three years' imprisonment with hard labour. This miscreant after his conviction made a statement to the effect that, being out of employment some two years back, he had been engaged by the owner of a salt lorcha as sailing master; that subsequently his employer engaged in convoying Chinese vessels on the north-east coast and that on two particular occasions, *there had been piratical acts!* The prisoner also now repeated his assertion that he had had no hand in the murder of Lieutenant Miranda, but that he had been engaged in piratical acts of the worst description, quite apart from his own confession, there could be no doubt upon the minds of any one acquainted with the dreadful deeds committed either by Fenton himself or those with whom he had been engaged, especially having regard to the reports which had repeatedly reached Hongkong about the doings of the piratical lorchas under European or American command.* As may be surmised, it was with no little satisfaction that the community heard of Fenton's conviction, however inadequate was the punishment which could now be meted out to him.

1852.

**Fenton is arraigned on a charge of consorting with pirates.**

**Found guilty and convicted.**

**His confessions.**

**Conclusions.**

**Consular Ordinance No. 2 of 1852. Right of appeal to the Supreme Court from Consular decisions taken away.**

The Consular Ordinance, No. 2 of 1852, was published on the 27th January, 1852, without a draft having been previously submitted to the community. It further took away the right of appeal to the Supreme Court against Consular decisions under Consular Ordinance No. 5 of 1844, for breach of treaties between Great Britain and China, and which, under Ordinance No. 2 of 1852, were now made only reviewable by the Superintendent of Trade. By the Consular Ordinance No. 2 of 1847, consuls and vice-consuls were entrusted with judicial powers over British subjects, subject to appeal to the Supreme Court; but the main provision in the present Ordinance was to leave it to the discretion of the consul or vice-consul to adjudicate finally or "to transmit the depositions to the Superintendent of Trade who, as he saw fit, could either remit the matter back to the consul for decision, or suffer it to go before the Supreme Court." Needless to say that this indirect mode of taking away the right of appeal to the Supreme Court caused great dissatisfaction, considering especially the way in which the Ordinance had been passed, the public having been given no opportunity of commenting upon it.†

**Consular Ordinance No. 5 of 1844.**

**Consular Ordinance No. 2 of 1847.**

**Discretionary powers as to allowance of appeal.**

**Great dissatisfaction.**

**Inconvenience to the Court**

Owing to the great inconvenience caused to the Bench in particular, by the public making frequent use as an entrance to the

* See the case of the American pirate Eli Boggs—Chap. XVIII., *infrà*.

† See further in reference to Consular Decisions, *antè* Chap. IV., p. 115; the present Chap., *antè* p. 300; Chap. XIV., *infrà*; Vol. II., Chaps. XXXVII., XXXIX., XLII., XLIX., and LXXII.

Court, of the door-way nearest the Chief Justice's Chambers, and on the left side of the Bench, by direction of the Chief Justice, a board was set up, where it stands to the present day, bearing the words "Entrance for barristers, solicitors, reporters, and officers of the Court only."

Notice board put up by order of Chief Justice limiting passage to professionals and a few others.

Needless to say that this 'order' has been a standing one ever since,* the present Chief Justice, Sir John Carrington,† but recently ordering its strict enforcement.

Order a standing one ever since.

On the 11th February, a table of fees authorized to be received in the Vice-Admiralty Court was duly passed, the same being published as late as on the 16th July, 1855.

Table of Fees in the Vice-Admiralty Court, February

A Criminal Sessions of the Supreme Court commenced on Monday, the 16th February. There were ten cases upon the Calendar. In one, six Malay sailors, Booray and others, were charged with the murder of John Paterson, chief mate of the *Corcyra*, on the high seas, two being found guilty and sentence of death recorded against them. The trial was chiefly remarkable on account of the sentence and the reasons assigned by Chief Justice Hulme for sparing the men's lives, namely, that as the Governor had interfered with a former sentence of his, when he had passed the fullest penalty of the law, by commuting same, he, the Chief Justice, therefore considered that in the present case the prisoners were entitled to the same leniency. Addressing the prisoners, His Lordship said :—

Criminal Sessions. Regina *v.* Booray and Others. Murder of John Paterson, of the *Corcyra*, by Malay sailors.

"Prisoners at the bar, you have been found guilty of wilful murder, and I should have had no hesitation in passing on you the fullest penalty of the law, were it not that on a former occasion I passed sentence of death in this Court on men who, partly on their own confession, were also proved fully guilty of wholesale murder, and that sentence, for what reason I know not, was commuted for a milder punishment. On the same grounds that those men received a commutation of their sentences, whatever those unknown grounds may have been, you, in all impartiality, are entitled to the same leniency. I have therefore only recorded sentence of death against you, and shall state to His Excellency the Governor my reasons for not at once sentencing you to the death you deserve!"

Sentence of death recorded.

Extraordinary conduct of the Chief Justice.

As the Governor had interfered with a previous sentence of his, the prisoners were entitled to the same leniency.

These extraordinary remarks called forth various expressions of public opinion, and however much the Chief Justice's remarks were to be deplored, it cannot be said that the Governor was altogether blameless for having given rise to them. The case which gave rise to the Chief Justice's comment occurred at the Criminal Sessions held in July, 1850, when nine Chinese were convicted of piracy with stabbing on a junk and sentenced to death, and to whom the Chief Justice had held out no hope of any

Public opinion.

Governor not altogether blameless.

* On this subject, see also Chap. XXX., *infrà*.
† See Vol. II., Chap. LXXXIX.

Ch. XII § III. 1852.

commutation of their sentence, but which the Governor nevertheless afterwards reduced to transportation for life.* In connexion with the case under consideration, however, it may be recorded, that the first prisoner, Booray, died in Gaol on Tuesday, the 14th September.

Death of Booray in gaol.

Death of Admiral Austen.

Rear-Admiral Austen, the naval Commander-in-Chief,† who did much in putting down piracy in the China seas during the short time he was on the station, sailed in H.M.S. *Hastings* for Rangoon on the 18th February, but died there on the 7th October, of cholera, at the age of seventy-three.

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* *Reg.* v. *Chan Ahtsup and ors.*, referred to *antè* pp. 289, 291.
† See *antè* p. 293.

# CHAPTER XIII.

## 1852-1853.

## SECTION I.

## 1852.

Departure of Chief Justice Hulme on leave to England.—Mr. Sterling, acting Chief Justice.—Mr. Bridges, acting Attorney-General.—Mode of selecting Justices of the Peace objected to. Memorial to Governor.—The curt reply.—Marriage Ordinance No. 1 of 1852. —Mr. Ed. Morgan, Marriage Registrar.—His death.—Governor Sir G. Bonham leaves for England on leave.—Major-General Jervois acts as Governor and also as Chief Superintendent of British Trade *pro tem.*—Act 3 and 4 Wm. IV. c. 93.—Dr. Bowring appointed Her Majesty's Acting Plenipotentiary and a Superintendent of British Trade.—Dr. Bowring assumes duties.—The grievance of the Colony in being burdened with entire salaries of combined offices of Governor, etc.—Mr. Elmslie acts in Canton.—Permanent separation of Governorship from office of Her Majesty's Plenipotentiary and Chief Superintendent of British Trade believed beneficial.—Administration of Governor Bonham reviewed. —Mr. Mercer gazetted a member of the Executive Council.—Desertion of soldiers and sailors.—Three cases of aiding soldiers to desert.—The deserters inveigled on board whalers.—The cases.—Their ill-usage.—Ordinance No. 2 of 1852, for the suppression of desertion.—Conviction of Heycock for setting fire to the American ship *Rhone*, Barque *Herald*.—Trial of Portuguese seamen for piracy and murder.—Crime a horrible and barbarous one.—Scuttled on the south coast of Java.—Arrested by the Dutch.—Sentenced to death.—The execution.—On the scaffold.—A free pardon. —Coroner's inquest held at Central Police Station.—Another free pardon on Queen's Birthday.—Death of Mrs. Cay.—Ordinance No. 3 of 1852, to amend the law of evidence.—Ordinance No. 4 of 1852, to facilitate the administration of criminal justice.—Nearly exact copies of Act 14 and 15 Vict. c. 99 and 100.—Complaints about prisoners in capital cases not allowed counsel when unable to retain one.—The practice heretofore in force.—No regular system.—Reform asked for upon the point.—Retirement of Mr. A. R Johnston from the service.—His career.—Succeeded by Mr. F. Harvey.—July Criminal Sessions. Charges of keeping bawdy houses. Outrages on public decency.—The Magistrate's object in committing for trial.—Chief Justice Hulme's opinion.—Verdict of the Jury.—Mr. Sterling, acting Chief Justice, rebukes the Jury.—Mr. Hillier, Chief Magistrate, goes on leave. Changes in consequence.—Mr. W. H. Mitchell.—Mr. May.—Departure of Messrs. Hillier and Johnston.—Return from leave of Lieutenant Pedder.—Mr. May, Marshal of the Vice-Admiralty Court.—Ordinance No. 5 of 1852, Writs of Capias ad Respondendum. —Interpretation in the Courts again discussed.—Mr. Caldwell's multifarious duties.—The interpretation question a public scandal.—Suggestion that boys in the public school be specially trained.—Death of the Duke of Wellington.—Ordinance No. 6 of 1852, for the prevention of desertion and better regulation of merchant seamen.—Claims of seamen to local consideration.—Creation of a Sailors' Home suggested.—November Criminal Sessions. Witness professing ignorance of dialect spoken is punished for contempt of Court.—Sentences of death.

## SECTION II.

## 1853.

Pawnbrokers wait upon the Governor. Complaint against the Police in search of stolen property.—Acting Chief Justice grants permission to press reporters to attend his chambers at the hearing of an important matter.—Privy Council appeal Y. J. Murrow *v.* C. J. F. Stuart.—Decision of Chief Justice Hulme affirmed.—The first appeal against a decision of the Supreme Court of Hongkong.



THE Chief Justice, the Honourable John Walter Hulme, proceeded to England on eighteen months' leave, for the benefit of his health, on the 28th February, by the P. & O. Steamer *Malta*, Mr. Sterling, the Attorney-General being appointed

Departure of Chief Justice Hulme on leave to England.

Ch. XIII § I. 1852.

acting Chief Justice, and Mr. Bridges, barrister-at-law, a local practitioner,* as acting Attorney-General, in the interim. The Chief Justice had been in poor health for a considerable time,† but yet with a laudable spirit had stuck to his post. He left the Colony amidst general regret and with the best wishes of the residents. He had not been on leave since his assumption of duty on the 16th June, 1848,‡ after that contemptible affair which gave rise to his suspension, and which reflected so little credit on either its originators or conductors, and had in its effect raised rather than lowered him in public estimation.

**Mr. Sterling acting Chief Justice.**

**Mr. Bridges, acting Attorney-General.**

**Mode of selecting Justices of the Peace objected to.**

**Memorial to Governor.**

**The curt reply.**

The way in which persons were selected for the position of Justice of the Peace gave dissatisfaction in certain quarters, and a memorial was addressed to the Government upon the subject. The petitioners were curtly informed, on the 15th March, that the fittest persons alone were selected for the office, which seems to have been the case judging by the names published at the time, and amongst whom was to be found Mr. John Charles Bowring, a son of Dr. Bowring, Her Majesty's Consul at Canton, and who was said to be a good Chinese scholar.

**Marriage Ordinance No. 1 of 1852.**

**Mr. Ed. Morgan, Marriage Registrar.**

**His death.**

The Marriage Ordinance, No. 1 of 1852, was passed on the 16th March, Mr. Edward Morgan, Auditor's Clerk, being appointed first Marriage Registrar under it. This gentleman, it may be noted, died whilst on leave, at Point de Galle, Ceylon, on the 28th October, 1853.

**Governor Sir G. Bonham leaves for England on leave.**

**Major-General Jervois acts as Governor and also as Chief Superintendent of British Trade *pro tem.***

**Act 3 and 4 Wm. IV. c. 93.**

**Dr. Bowring appointed Her Majesty's acting Plenipotentiary and a Superintendent of British Trade.**

**Dr. Bowring assumes duties.**

The Governor, Sir George Bonham, left for England on medical certificate by the P. & O. Steamer *Ganges*, on the 30th March. The Government Notification of that date, announcing his departure, also notified that Major-General Jervois, the Lieutenant-Governor, would administer the Government during His Excellency's absence, and until further notice, the functions of Chief Superintendent of the Trade of British subjects in China also. On the 14th April, a further notification announced "that a full power as Her Majesty's Plenipotentiary and a Commission as a Superintendent of Britith Trade in China under the Act of 3 and 4 Wm. IV. c. 93, addressed to John Bowring, Esquire, LL.D, Her Majesty's Consul at Canton, had arrived by the last mail, and that Dr. Bowring had, in obedience to Her Majesty's Commands, entered that day upon the duties of his office." The commission appointing him was dated the 19th December, 1851. Dr. Bowring had arrived from Canton in the H. E. I. Co's Steamer *Nemesis*, and landed under the usual salute. On arrival he at once took up his residence at

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* See *antè* Chap. XII. § II., p. 301.
† *Id.* pp. 304, 309.
‡ See *antè* Chap. X., p. 199.

Government House, being replaced at Canton by Mr. Adam Wallace Elmslie, the Vice-Consul.*

Ch. XIII § 1.

1852.

Mr. Elmslie acts in Canton.

It had long been one of the grievances of the Colony that it should be charged with an enormous salary when the principal portion of the duties of the recipient, were exercised under the Foreign Office, and for the benefit of British residents *in China*, who contributed nothing to Hongkong. The change noted above, therefore, was one of considerable importance, and it was thought that the permanent disjunction of the offices might operate beneficially and to the Colony prove a manifest relief.†

The grievance of the Colony in being burdened with entire salaries of combined offices of Governor, etc.

Permanent separation of Governorship from that of Her Majesty's Plenipotentiary and Chief Superintendent of British Trade believed beneficial.

On the departure of Sir George Bonham, the usual addresses were presented to him. During his administration, as will be remembered; complaints had been heard from time to time as to the deficient interpretation in the Courts of the Colony, and of his interference with judicial sentences, but a Governor whose acts no one could find fault with has never yet been appointed, and Governor Bonham, it is to be presumed, could not be expected to leave Hongkong amid universal plaudits.

Administration of Governor Bonham reviewed.

On the 31st March, Mr. Mercer was gazetted a member of the Executive Council.

Mr. Mercer gazetted a member of the Executive Council.

The desertion of soldiers and sailors from the Colony had of late become so frequent that the authorities at last awoke to a sense of their responsibility and determined to cope as far as they could with the growing evil. At the Sessions held on the 15th April, there were no less than three cases in which the prisoners were charged with aiding soldiers to desert. There had been upwards of twenty desertions since the 1st January, and nearly all had been inveigled on board ships in the harbour, chiefly whalers in want of hands. In one case no less than four soldiers had been stowed away by the mate in the forehold. In one case a verdict of not guilty was returned, the majority of the witnesses having left the Colony in the whaleship *Mount Wollaston*, in which two soldiers of the 59th Regiment had deserted the year before. From the ill-usage they were exposed to, both fell sick, one of them becoming totally blind, and at the first island reached they were put on shore and left without medicine, clothes, or provisions of any kind. Such was the report as given by one of the seamen of the vessel, upon whose testimony the sailor who enticed these unfortunate men to desert was committed for trial, and, without doubt, it was in consequence of these disclosures that the Acting Governor, Major-General Jervois, caused Ordinance No. 2 of 1852, dealing with the suppression of desertion in such cases, to be promptly framed and passed, the same being brought into operation on the 18th May, 1852.

Desertion of soldiers and sailors.

Three cases of aiding soldiers to desert.

The deserters inveigled on board whalers.

The cases.

Their ill-usage.

Ordinance No. 2 of 1852, for the suppression of desertion.

* For previous reference, see *ante* Chap. IX., p. 189.

† On the return of Governor Bonham, the offices were combined as before—see Chap. XIV., *infra*.

Ch. XIII § I.

1852.

Conviction of Heycock for setting fire to the American ship *Rhone*.

At this Sessions also, R. G. Heycock was convicted of setting fire to the American ship *Rhone*, and sentenced to fifteen years' transportation, dying in prison, however, a year afterwards, on the 20th April, 1853.

Barque *Herald*.

Trial of Portuguese seamen for piracy and murder.

Another *cause célèbre* was tried at the Criminal Sessions on the 17th April, when Clementi and nine other Portuguese seamen, of the British barque *Herald*, stood their trial on a charge of piracy and murder of the Captain, chief, and second-mates and others to the number of seven, (including the captain's wife, Mrs. Lawson) of the said ship. The crime was a horrible and most barbarous one, the motive being robbery, some of the officers being actually butchered while asleep or lying ill. The ship was at the time on her voyage from Shanghai to Scotland, and was scuttled on the rocks on the south coast of Java. The Dutch authorities, who effected the arrest of the prisoners, had acted most honourably and with praiseworthy efforts in the matter. forwarding the crew, after their capture, to Singapore from whence they were duly shipped to Hongkong. At the trial, the acting Chief Justice, Mr. Sterling, presided, Mr. Bridges prosecuting for the Crown, the prisoners being defended by Mr. Gaskell. The prisoners were found guilty and sentence of death was passed on the ten of them. Two of the remaining crew against whom nothing appeared in the indictment, were put out of the dock and afterwards discharged by proclamation.

Crime a horrible and barbarous one.

Scuttled on the south coast of Java.

Arrested by the Dutch.

Sentenced to death.

On the 26th April, the acting Governor proclaimed that the sentence passed on four of the prisoners had been commuted to transportation for life, the last sentence of the law being carried out on Monday, the 3rd May, at six o'clock in the morning, on the remaining six. The six men had been attended by a priest of their own persuasion who ministered to them on the scaffold, where one of the doomed men addressed the crowd, composed of all classes, to the effect that both himself and his companions were sensible of the justice of their punishment, and that they did not deserve to live. The hangman on this occasion was a coloured American prisoner whose term of imprisonment was remitted as a reward for his services. "After hanging for an hour," says a report, "the bodies were cut down and thrown into a wagon to which a horse stood harnessed close by, and covered with mats, the heap of lifeless flesh was taken back to the Gaol where it was interred. This part of the business was the most revolting of the whole."

The execution.

On the scaffold.

A boy, named Chow Atae, convicted of robbery at the Sessions of the 16th April, was granted a free pardon by the Governor on the 8th June.

A free pardon.

Owing to the unnecessary inconvenience to which Coroner's Juries were subjected, in consequence of representations made

Coroner's inquest

to the Governor by a juryman, official intimation was received early in May, that "in order to promote public convenience, inquests would be held at the Central Police Station except in cases offering obstacles to such an arrangement."

1852. held at Central Police Station.

The prerogative of mercy, consequent on the approach of the Queen's Birthday, was extended to Cheng Akai, convicted at the last October Sessions of manslaughter.

Another free pardon on Queen's Birthday.

The Registrar of the Supreme Court, Mr. Robert Dundas Cay, on the 21st June, had to deplore the loss of his wife, whose death took place at Victoria, on that date. This lady had arrived in the Colony at the same time as Mr. Cay, in May, 1844.*

Death of Mrs. Cay.

On the 29th June, Ordinance No. 3 of 1852, entitled "An Ordinance to amend the Law of Evidence," and Ordinance No. 4 of 1852 entitled "An Ordinance to facilitate the Administration of Criminal Justice," were duly passed. These Ordinances, which are very nearly exact copies of two Acts passed in England the year before [14 and 15 Vict., Cap. 99 and 100], were apparently promulgated without being first published for public information, but undoubtedly they were then great strides in local legislation, and an important change in the administration of justice.

Ordinance No. 3 of 1852, to amend the law of evidence.

Ordinance No. 4 of 1852, to facilitate the administration of criminal justice.

Nearly exact copies of Act 14 and 15 Vict. c. 99 and 100.

Complaints were now formulated in respect of prisoners in serious cases, mostly involving capital sentences, not being allowed counsel in their defence when unable themselves to retain them. It had been the practice of the Court until now, sometimes to ask a solicitor or counsel to defend a prisoner, or for counsel to consent to undertake the defence of a prisoner, generally a European, when applied to direct by the prisoner himself, and not infrequently was the application made in open Court to any professional who happened to be present,† but there existed no regular system or order upon the point, and the matter was now taken up by the local press, the acting Attorney-General, Mr. Bridges, being asked to effect some reform or improvement by which every prisoner should have a lawyer to defend him, as the same facilities and abilities should be brought to the defence as are brought to the attack. There could hardly be any hardship if each of the lawyers in the Colony were to take up the defence of criminals in rotation of Sessions, and, in comparison with the the jurors, it certainly would not be so hard, even if the service were gratuitous, as it was to take away from the com-

Complaints about prisoners in capital cases not allowed counsel when unable to retain one.

The practice heretofore in force.

No regular system.

Reform asked for upon the point.

* See *antè* Chap. II, p. 47.

† On this point see the case of Steele, reported *antè* Chap. XII. § I., p. 276. At the trial of Chui Apo, it will be remembered, Mr. Gaskell undertook the defence of the prisoner at the request of the Governor, see *antè* Chap. XII. § II., p. 297. See also the case of Wm. Kelly in 1856, when Counsel and Solicitor were appointed in Court to defend the prisoner—Chap. XVI. § II., *infrà*.

Ch. XIII § I. munity eighteen of its working members to form a jury. But it was not really until 1872 that any reform was effected.*

1852.

**Retirement of Mr. A. R. Johnston from the service. His career. Succeeded by Mr. F. Harvey.**

On the 9th July, Mr. A. R. Johnston, Secretary and Registrar to Her Majesty's Plenipotentiary and the Superintendency of British Trade in China, retired from the service, and was succeeded by Mr. Frederick Harvey on a reduced salary.†

**July Criminal Sessions. Charges of keeping bawdy houses.**

The July Criminal Sessions was held on the 15th and 16th July. The first case was that in which a woman was charged with keeping a bawdy house. The prisoner, as usual with Chinese in those days, was undefended, and pleaded not guilty. Such cases, being committed for trial before the Supreme Court, instead of being adjudicated upon by the Magistrate, had already given offence, and it was hoped that this was the last instance the Hongkong public would have of similar outrages on public decency. The Magistrate, in committing such cases for trial, did so with the object of securing a heavier punishment on the delinquents than he himself could inflict, hoping thereby to put down a growing evil, but neither the public nor the Chief Justice, Mr. Hulme when in office, looked upon it in the same light, and the Jury, in returning a verdict of not guilty, accompanied it with the following remarks :—

**Outrages on public decency. The Magistrate's object in committing for trial.**

**Chief Justice Hulme's opinion. Verdict of the jury.**

"In returning a verdict of acquittal, the Jury beg to remark that the prisoner had been in gaol for a period of nearly three months, as heavy a punishment as the offence deserved, had she been found guilty. And they further beg to recommend that the Magistrates be instructed to decide such cases summarily in future."

**Mr. Sterling, acting Chief Justice, rebukes the Jury.**

The acting Chief Justice, Mr. Sterling, rebuked the Jury for going beyond their province, and laid it down that the public prosecutor was the proper person to determine the point, having

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* See Vol. II., Chap. LVI.

† Mr. Johnston entered Her Majesty's Civil Service at the island of Mauritius in February, 1828; from which he was transferred to the Civil Service in China, whence he proceeded in January, 1834, as private secretary to Lord Napier, who arrived in Macao Roads on the 15th June, 1834, in H. M. S. *Andromache*. After His Lordship's death in October of that year, Mr. Johnston was made Secretary and Treasurer to the Superintendent of Trade, and some time afterwards, third Superintendent of Trade. When in 1837, the offices of second and third Superintendent were abolished, Mr. Johnston was appointed to the office of Deputy Superintendent, which he held until November, 1843, when the changes brought about by the Treaty in the position of the Chief Superintendent, who was likewise Governor of Hongkong, created a corresponding alteration in the duties of Mr. Johnston's office, who from Deputy Superintendent, became Secretary and Registrar,* which post he held until the 9th July as shown above, when, having obtained a handsome pension, he was succeeded by Mr. Harvey. In June, 1841, Mr. Johnston administered the Government of Hongkong,† until he was relieved by the arrival of Sir Henry Pottinger from the North, and was appointed a member of the Executive and Legislative Councils previously to his going Home in November, 1843, on sick leave, and on his return to Hongkong in 1846, Sir John Davis appointed him to a seat in the Executive Council. Mr. Johnston belonged to a family which had long held a conspicuous place in the public service. His father, Sir Alexander Johnston, was Chief Justice of Ceylon, and held the office of Judge of Appeals before the Privy Council from 1831 to 1848. A brother of his had been employed in Portugal and Spain, and had settled the claims of Don Pacifico to the entire satisfaction of the Foreign Office. Mr. Johnston retired on a pension of £600 a year.

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* See Introduction, *ante* p. 21.

† *Id.* p. 9.

a discretion in such matters, which in his (Mr. Sterling's) opinion had been wisely exercised in the present instance. It will be remembered that Mr. Hulme, the Chief Justice, fully concurred with the Jury in their views similarly expressed at the Criminal Sessions held in December, 1851.*

**Mr. Hillier, Chief Magistrate, goes on leave. Changes in consequence. Mr. W. H. Mitchell. Mr. May.**

A Government Notification, on the 19th July, intimated that Mr. Hillier, the Chief Magistrate, had been granted six months' leave of absence on sick certificate, and that Mr. W. H. Mitchell, the Assistant Magistrate and Sheriff, would perform his duties, and that Mr. May, the Superintendent of Police, would fill the offices of Sheriff and Coroner, and perform magisterial duties, whenever his services were required.

**Departure of Messrs. Hillier and Johnston. Return from leave of Lieutenant Pedder. Mr. May, Marshal of the Vice-Admiralty Court.**

Mr. Hillier, together with Mr. Johnston, the retiring Secretary and Registrar to the Plenipotentiary, left for England, on the 23rd July, by the P. & O. Steamer *Malta*. On the 5th August, Lieutenant Pedder, the Harbour Master and Marine Magistrate, who had returned to the Colony on that day, resumed the duties of his various offices, and on the same date, Mr. May was gazetted as Marshal of the Vice-Admiralty Court *vice* Mr. W. H. Mitchell while performing the duties of Chief Magistrate.

**Ordinance No. 5 of 1852. Writs of Capias ad Respondendum.**

Ordinance No. 5 of 1852, giving power to the Registrar to issue writs of Capias ad Respondendum during the illness or temporary absence of the Chief Justice, was passed on the 11th August.

**Interpretation in the Courts again discussed. Mr. Caldwell's multifarious duties.**

During this month, the interpretation, or rather want of interpretation, in the Courts again formed the subject of public discussion.† Mr. Caldwell, the Assistant Superintendent of Police, was about the only reliable interpreter the Colony possessed, and it was often asked what the condition of things would be, should he die or leave the Colony, quite apart from the multifarious duties he had to perform, for, besides his Police duties, he was also Chinese Interpreter to the Supreme Court, occasional Chinese interpreter at the Police Court, and in addition was also interpreter in Portuguese, Malay, and Hindustani, and Joint-Assessor and Collector of the Police rate. The Government was asked to take immediate steps to bring about an improvement in what was considered a public scandal, comparisons being drawn between interpreters allowed under the Foreign and Colonial Offices, greatly to the detriment of the latter. This was a momentous question concerning no less than almost the entire administration of justice in the Colony, and now for the first time in the records, is to be found the suggestion that boys in the public schools of the Colony should be specially trained as interpreters.

**The interpretation question a public scandal.**

**Suggestion that boys in the public school be specially trained.**

* See *antè* Chap. XII. § II., p. 308.

Ch. XIII § I.

1852.

Death of the Duke of Wellington.

It may not be inappropriate here to note that news of the death of the Duke of Wellington, which took place on Tuesday afternoon, the 14th September, 1852, at Walmer Castle, England, reached Hongkong on the 3rd November, by the P. & O. Steamer *Pottinger*.

Ordinance No. 6 of 1852, for the prevention of desertion and better regulation of merchant seamen. Claims of seamen to local consideration. Creation of a Sailors' Home suggested.

Ordinance No. 6 of 1852,—a very necessary enactment,—which met with general approval, for the prevention of desertion and better regulation of merchant seamen in the Colony, was passed on the 6th November. More than once the claims of seamen to local consideration had been publicly urged, and the creation of a Sailors' Home suggested, whereby the bodily comforts of the numerous sailors frequenting the port might be attended to.

November Criminal Sessions. Witness professing ignorance of dialect spoken, is punished for contempt of Court.

At the Criminal Sessions held on the 15th November, a piracy case against two Chinese broke down in consequence of the witness professing ignorance of the dialect in which the interpreter spoke to him. This the acting Attorney-General considered a mere sham, and, at his earnest request, the acting Chief Justice, after some demur, sentenced the witness to six weeks' imprisonment for contempt of Court. The witness fully understood the sentence, however, when translated to him, the prisoners themselves being discharged.

Sentences of death.

On the 15th December two prisoners were sentenced to death, one for highway robbery, and the other for murder on the high seas.

Ch. XIII § II.

1853.

Pawnbrokers wait upon the Governor. Complaint against the Police in search of stolen property.

The pawnbrokers waited upon the Governor on the 31st January to complain against the action of the Police in occasionally intruding upon their premises in search of stolen property, but as the calling of a pawnbroker made no exemption as regards visits from the Police, and which they certainly did not enjoy in their own country, nothing seems to have come of the deputation.

Acting Chief Justice grants permission to press reporters to attend his chambers at the hearing of an important matter.

On the 2nd February, the acting Chief Justice granted permission to certain press reporters to attend his chambers at the hearing of an important matter, wherein it was sought to restrain a local solicitor who received an annual retainer from a company as its legal adviser, from appearing on behalf of an opponent who was now desirous of retaining his services as against the said company.

Privy Council appeal Y. J. Murrow *v.* C. J. F. Stuart.

The Privy Council on the 3rd February dismissed the appeal case in which Yorick James Murrow was the appellant and Charles James Fife Stuart the respondent. This was an action brought by the respondent, as endorsee, against the appellant,

as drawer, of a bill of exchange for £1,154. 15*s.* 7*d.* The bill was drawn by the appellant under the name and style of "Murrow & Co.," upon and accepted by Messrs. Johnson, Cole & Co., payable six months after sight to the order of the appellant, and by the appellant endorsed to one Burn, and by Burn endorsed to W. W. Cargill, "value in account with the Oriental Bank," and by Cargill endorsed to the respondent. Burn was the manager of the bank at the time of the endorsement to him, and the respondent was the manager at the time of the endorsement to him. Upon the bill being dishonoured, the respondent as endorsee brought an action against the appellant as drawer. The defendant, Murrow, filed a general demurrer that the endorsements preceding that to the plaintiff were restrictive. Chief Justice Hulme held that there was nothing upon the endorsement by Burn to preclude Cargill, the restricted endorsee, from making an assignment of the bill, so as to give the subsequent endorsee a right of action for the benefit of the restraining endorser, or *cestui que trust*, as the case may be, which decision was affirmed by the Judicial Committee of the Privy Council.*

**Decision of Chief Justice Hulme affirmed.**

**The first appeal against a decision of the Supreme Court of Hongkong.**

This was the first appeal against a decision of the Supreme Court of Hongkong, which, it may be added, was permissible at this time under the Act 2 & 3 Wm. IV. c. 92.†

* See 8 Moo. P.C.C. 267.

† See also 3 & 4 Wm. IV., c. 41; 6 & 7 Wm. IV., c. 112, and *Ex parte* Smyth, 2 C. M. & R. 748; s. c. 3 Ad. & E. 719; 1 Tyr. & G. 222; 5 N. & M. 145.

# CHAPTER XIV.

## 1853-1854.

## SECTION I.

## 1853.

Sir George Bonham's return from leave.—Made a Baronet.—Return of Chief Justice Hulme and of Mr. Hillier, the Chief Magistrate.—Offices of Governor and Plenipotentiary combined as before.—Chief Justice returned in improved health.—Mr. Sterling as acting Chief Justice.—Mr. Bridges as acting Attorney-General.—Mr. T. Wade, appointed Vice-Consul at Shanghai.—Dr. Bowring returns to Canton.—Mr. Trotter, Clerk to the Chief Justice, goes on leave.—Mr. Bevan, of *The Hongkong Register*, acts.—Dr. Bowring goes to Java.—Mr. H. S. Parkes acts at Canton.—Convicts leave for Penang.—Dr. Bowring proceeds to England.—Mr. Hillier appointed member of the Legislative Council, and Mr. Sterling, of the Executive Council.—The Governor visits northern consulates.—Consular appeal, Wardley & Co. *v.* Wilkinson. Refusal of Consul to allow counsel to appear before him.—The Chief Justice's opinion.—Departure on leave of Mr. Cay, the Registrar.—Mr. Alexander acts.—Mr. W. H. Mitchell, Assistant Magistrate, goes on leave.—Mr. May acts.—Mr. Caldwell, acting Superintendent of Police.—Crime at this period. The Police.—Public meeting proposed.—April Criminal Sessions. Trivial cases committed.—Home currency. Legal tender.—Free pardons on Queen's Birthday.—Tenders for the erection of a tread-wheel in the prisons.—Privy Council Appeal Tronson *v.* Dent and others.—Appeal against decision of Mr. Sterling, acting Chief Justice.—Appeal dismissed.—Divorce case of Mr. W. H. Mitchell, Assistant Magistrate, and his wife.—The report of the case.—Separation pronounced for.—Apathy characteristic of the Chinese.—Chinese in serious cases of assault and robbery looking on and not assisting.—Assault on Captain Montgomery, of the *Pestonjee Bomanjee*.—Lo Ahoi, a by-stander, committed for misprision of felony.—The Chinese petition the Chief Magistrate.—Mr. Hillier's reply.—Apathy displayed by Chinese where their own persons and property not at stake.—Acquittal of Lo Ahoi.—Admiral Pellew succeeds Admiral Austen.—The appointment criticized in *The Times*.—Destruction of pirates by Admiral Pellew.—Murder of Europeans on board the *Arratoon Apcar* by Chinese.—The murderers escape.—Order of the Queen-in-Council of the 13th June, 1853, abolishing Consular Ordinances and substituting a Code.—Powers heretofore vested in the Supreme Court.—Power for Superintendent and Consuls to make rules and to enforce them by fine and imprisonment.—Civil suits.—Appeals to the Supreme Court of Hongkong and to the Chief Superintendent.—Breaches of rules and regulations.—Appeal from Consul or Vice-Consul to the Chief Superintendent.—Case for trial before the Supreme Court of Hongkong.—The power of deporting refractory subjects.—Generally.—Ordinance No. 1 of 1853.—Publication of first *Government Gazette*.—Order of the Queen-in-Council of 13th June, 1853, establishing Rules in Appeals to the Queen-in-Council.—Mr. E. R. Michell replaces Lieutenant Pedder on leave.—Tenders for conveyance of convicts to Penang.—Determination of Chinese affairs.—Ordinance No. 3 of 1853.—Duties of Chinese tepos under Ordinance No. 13 of 1844 extended.—Settlement of civil suits among Chinese.—Code of laws by General Gough for the government of the Chinese community.—Opposition to Chinese being given share in the administration of justice.—Ordinance No. 3 of 1853 experimental only.—The preamble.—A 'tepo.'—Ordinance No. 13 of 1844.—Paouchong and Paoukea Chinese peace officers.—First attempt at legislation for benefit of Chinese.—Main opposition to Chinese being entrusted with administration of the law.—Public opinion on the point.—Ordinance No. 6 of 1857.

## SECTION II.

## 1854.

Dr. Bowring appointed Governor of Hongkong and Her Majesty's Plenipotentiary, etc.—English opinion.—Dr. Bowring presented to the Queen and knighted.—His arrival in Hongkong.—Colonel Caine, Lieutenant-Governor.—Mr. Mercer, Colonial Secretary, *vice* Caine.—Colonel Griffin, R.A., commanding the troops, a member of the Executive Council.—Colonel Caine's commission only effective in the absence of Sir John Bowring.—Mr. Mercer a member of the Executive Council.—Departure of Sir George Bonham. His policy in Hongkong.—Supernumerary interpreters attached to Consular Establishment

increased.—Mr. Bridges consults the Chief Justice upon a matter.—The Chief Justice's reply. "The Court does not sit as a consulting surgeon."—Tenders for passage of Chinese convicts to Penang.—The recall of Admiral Pellew.—Admiral Sterling succeeds Admiral Pellew.—Admiral Seymour as successor to Admiral Sterling.—Death of Lieutenant Pedder, the Marine Magistrate, etc.—Captain T. V. Watkins, R.N., replaces Lieutenant Pedder.—All marine cases, except Chinese, entertained by Marine Magistrate.



Sir George Bonham's return from leave.

Made a Baronet.

Return of Chief Justice Hulme and of Mr. Hillier, the Chief Magistrate.

Offices of Governor and Plenipotentiary combined as before.*

Chief Justice returned in improved health.

Mr. Sterling as acting Chief Justice.

Mr. Bridges as acting Attorney-General.

Mr. T. Wade, appointed Vice-Consul at Shanghai.

Dr. Bowring returns to Canton.

Mr. Trotter, Clerk to the Chief Justice, goes on leave.

Mr. Bevan, of *The Hongkong Register*, acts.

Dr. Bowring goes to Java.

Mr. H. S. Parkes acts at Canton.

Convicts leave for Penang.

THE P. & O. Steamer *Singapore* arrived in Hongkong on Sunday, the 13th February. She brought as passengers the Governor, Sir George Bonham, who had been raised to the dignity of a Baronet shortly before leaving England, the Chief Justice, the Honourable J. W. Hulme, and the Chief Magistrate, Mr. Hillier. Sir George Bonham's return solved several important problems. The first was as to his return, which had been doubted, and the next as to the probability of the two offices of Governor and Plenipotentiary being ever united again in one official.*

As regards the respected Chief Justice, whose health had much improved by his trip to Europe, his resumption of duties in the Colony was a source of great satisfaction, though at the same time, regret was felt in taking leave of the acting Chief Justice, Mr. Sterling. His conduct, while holding the office of acting Chief Justice, had entitled him to the highest respect. He was believed to be conscientious, and had proved an able and painstaking Judge, and a worthy representative of the gentleman on whose return the Colonists congratulated themselves. Mr. Bridges, as acting Attorney-General, had also filled his office in a satisfactory manner, putting aside his inexperience and want of knowledge of common law to which, it was said, his previous studies had not been directed.

On the 14th February, the appointment of Mr. Thomas Wade, the Assistant Chinese Interpreter and Interpreter to the Governor,† as British Vice-Consul at Shanghai, vacant by the promotion of Mr. Robertson, barrister-at-law, to the Amoy consulship, and who, it will be remembered, arrived in the Colony at the same time as Mr. Sirr in 1844,‡ was duly gazetted. The resumption by Dr. Bowring of his duties as Consul at Canton was also notified on the same day.

Mr. G. A. Trotter, Clerk to the Chief Justice, proceeded to England on leave of absence on the 25th February, being replaced by Mr. W. F. Bevan, of *The Hongkong Register* editorial staff.

Having obtained three months' leave of absence, Dr. Bowring left Hongkong on the 10th March by H. E. I. Co.'s Steamer *Semiramis*, on a tour to Java, being in the meantime succeeded by Mr. Harry S. Parkes, Interpreter to the Canton Consulate. By the same boat there left twenty convicts, nineteen Chinese and one Malay, for Penang.

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* The separation was not effected until 1859—see Chap. XXVIII., *infrà*.

† See *antè* Chap. V. § II., p. 130; and Chap. IX., p. 189.

‡ See *antè* Chap. II., p. 55.

Ch. XIV § 1.

1853.

Dr. Bowring proceeds to England.

On the 1st May, Dr. Bowring's leave was extended to twelve months, when he left for England, Mr. Robertson proceeding from Amoy to replace him.

Mr. Hillier appointed member of the Legislative Council, and Mr. Sterling, of the Executive Council.

A notification, of the 8th March, announced the appointment of Mr. Hillier to the Legislative Council, in the room of Mr. Sterling, removed to the Executive Council. This arrangement was considered satisfactory so long as the Governor's power in making laws was unlimited, and the proceedings of the Council kept secret.

The Governor visits northern consulates.

On the morning of the 13th March, the Governor proceeded to the northern consulates in H. M. S. *Hermes*, returning on the 26th May, the government in the interval having been administered during his absence by the Lieutenant-Governor, Major-General Jervois.

Consular appeal, Wardley & Co. v. Wilkinson.

Refusal of Consul to allow counsel to appear before him.

The Chief Justice's opinion.

In the Consular appeal case of *Wardley & Co.* v. *Wilkinson*, *Sanders & Co.*, Chief Justice Hulme, on the 21st March, expressed surprise at the acting Consul at Canton, Mr. Elmslie,* having refused to allow counsel, Mr. Pollard, to appear before him, and said he was astonished at any Court refusing such assistance, and remitted the case for re-hearing. It may be remarked that Mr. Bridges now appeared for the appellants, and the Attorney-General for the Consul. The Chief Justice expressed his opinion that the presence of legal men in the Consular Courts could only tend to make proceedings more regular, adding, moreover, that he did not admire the way things were conducted in the Consular Courts. After much discussion, as will be seen hereafter, it was not until 1856 that the right of counsel to appear before the Consular Courts was really admitted.†

Departure on leave of Mr. Cay, the Registrar.

Mr. Alexander acts.

Mr. W. H. Mitchell, Assistant Magistrate, goes on leave.

Mr. May acts.

Mr. Caldwell, acting Superintendent of Police.

Mr. Cay, the Registrar of the Supreme Court, proceeded on leave of absence on the 24th March, being succeeded by Mr. Alexander, the Deputy Registrar,‡ and on the same date Mr. W. H. Mitchell, styled "Assistant Magistrate of Police, Sheriff, Provost Marshal, and Marshal of the Vice-Admiralty Court and Coroner," went on twelve months' leave. Mr. Charles May, Superintendent of Police and Registrar-General, replaced him, while Mr. Caldwell, styled "Assistant Superintendent of Police and General Interpreter," replaced Mr. May.

Crime at this period.

The number of burglaries committed in the town was at this period again on the increase, the thieves placing the Police completely at defiance, and so strong had latterly become the insecurity of property, that it was proposed to call a public meeting and appoint a deputation to remonstrate with the Government.

* See *antè* Chap. XIII. § I., p. 322.
† Chap. XVI. § II., *infrà*.
‡ See *antè* Chap. XII. § I., p. 288.

At the Criminal Sessions, held on the 22nd April, several of the cases committed for trial would have been summarily decided, had not the Chief Magistrate considered it necessary, for the determent of others, that a more severe punishment should be awarded than it lay in his power to inflict.

The Police. Public meeting proposed. Trivial cases committed.

The Proclamation by the Queen, to come into force on the 1st October, 1853, making the coins of the United Kingdom current in Hongkong, and declaring the same not a legal tender in payment of sums exceeding forty shillings, was duly published on the 27th April.

Home currency. Legal tender.

On the occasion of the Queen's Birthday, the acting Governor, on the 24th May, granted a free pardon to two Chinese, one being a woman. In further connexion with the Gaol, it may be mentioned that, on the 7th June, the Government called for tenders for the erection of a tread-wheel and other works.

Free pardons on Queen's Birthday. Tenders for the erection of a tread-wheel in the prisons.

The appeal case of Tromson, appellant, *v.* Dent and others, respondents, was finally dealt with by the Privy Council on the 22nd June, 1853.* This was an appeal against the decision of the acting Chief Justice, the Honourable Paul Ivy Sterling, delivered on the 27th March, 1852, upon the verdict of a jury in an action of assumpsit brought by the respondents against the appellant, to recover the value of twenty-two chests of Behar opium, shipped on board the steam-vessel the *Erin*, of which the appellant was master, on a voyage from Calcutta to Hongkong, and alleged to have been lost through the improper conduct of the appellant as such master. The appeal was dismissed with costs.

Privy Council Appeal. Tromson *v.* Dent and others. Appeal against decision of Mr. Sterling, acting Chief Justice. Appeal dismissed.

On the 8th July, the divorce suit of Mr. W. H. Mitchell, the Assistant Magistrate, against his wife, and in which the co-respondent was styled "Prince of Armenia," was tried in the Court of Queen's Bench before Lord Campbell and a special Jury. Mr. Edwin James, with whom was Mr. Hance, appeared for the plaintiff, and Mr. Macaulay for the defendant. From the report of the case which appeared in *The Times* of the 9th July, the plaintiff was married on the 1st July, 1848, in Hongkong, by the Reverend Mr. Stanton, to the defendant who was then Mrs. Kirby, the widow of a local merchant. The Jury finding a verdict of guilty, the damages against the co-respondent were assessed at £700.

Divorce case of Mr. W. H. Mitchell, Assistant Magistrate, and his wife. The report of the case.

On the 9th March, 1854, the separation was pronounced for, the suit coming off in the Consistory Court before Dr. Lushing-

Separation pronounced for.

* 8 Moo. P. C. C. 419.

Ch. XIV § 1. 1853.

ton. The following is an extract from a Home paper of the time on the subject :—

"The defendant had left Hongkong for England with Dr. and Mrs. Stewart, her husband being the acting Chief Magistrate of Hongkong and unable to leave his duties. For some time she resided with a Mrs. Lay, but in the month of June, 1852, went to live at a boarding-house in Weymouth Street, where it was alleged she met with a person named Koricoz, who styled himself the Prince of Armenia, and with whom two specific acts of adultery were charged. She was expelled from that house, but it was pleaded great intimacy subsisted between her and Koricoz. Mr. Mitchell, on being apprised of the facts, came to this country, brought an action against Koricoz, and obtained a verdict with £700 damages. An allegation was given in by Mrs. Mitchell, denying the truth of the facts pleaded in the libel of the husband.

Dr. Haggard was proceeding to open the case on behalf of Mr. Mitchell, when the learned Judge interposed, and said that he should like to hear the counsel on the other side.

Dr. Deane said that he had intended calling the attention of the Court to the evidence of two of the witnesses in the case; but, as the learned Judge had read the evidence, he would not press the matter.

Dr. Lushington said that he could not bring himself to doubt for a single moment that the adultery was satisfactorily proved. He therefore pronounced for the separation, and signed the sentence."

**Apathy characteristic of the Chinese.**

**Chinese in serious cases of assault and robbery looking on and not assisting.**

**Assault on Captain Montgomery, of the *Pestonjee Romanjee*.**

**Lo Ahoi, a by-stander, committed for misprision of felony.**

**The Chinese petition the Chief Magistrate.**

**Mr. Hillier's reply.**

**Apathy displayed by Chinese where their own persons and property not at stake.**

It had been a subject of universal complaint on the part of Europeans in the Colony, and one of long standing which exists to this day, denoting apathy characteristic of and immutable in the Chinaman, that in cases of assault and robbery in the streets, though hundreds of Chinese might be looking on, the offenders are permitted to escape without an arm being stretched out to apprehend them, but in one instance, that of Captain Montgomery, of the *Pestonjee Romanjee*, who was assaulted and robbed in the Queen's Road in April, a by-stander, named Lo Ahoi, reckoned without his host, for he was taken in custody, examined, and committed for trial on a charge of misprision of felony. This proceeding seemed to have alarmed his countryman, several of whom petitioned the Chief Magistrate for his discharge, but of course ineffectually. The arguments they used may be inferred from Mr. Hillier's reply, copies of which were posted up in the markets and principal thoroughfares. It severely animadverted on the apathy displayed by the Chinese in every case in which their own persons and property are not at stake, especially instancing fires, when, with few exceptions, not the slightest assistance is rendered by the crowds who flock to the spot with intent to pillage, or for the mere gratification of curiosity. Tried at the Criminal Sessions held on the 15th July, Lo Ahoi was however acquitted, no witnesses having appeared, and the Jury naturally placing but little reliance upon

instances of such apathy, as innate in the Chinaman, will be found recorded occasionally in this work.* Ch. XIV § — 1853.

Admiral Pellew succeeds Admiral Austen.

On Monday, the 1st August, about noon, Her Majesty's Frigate *Winchester*, Captain Shadwell, bearing the flag of Sir Fleetwood Broughton Reynolds Pellew, C.B., K.C.H., Vice-Admiral of the Blue, in succession to the late Admiral Austen,† as Commander-in-Chief in the East Indies, arrived in the harbour. Admiral Pellew was the second son of the late Admiral Lord Viscount Exmouth, G.C.B.; and on the occasion of his appointment to the command of the forces in the East, a correspondent of *The Times*, evidently acquainted with Admiral Pellew's qualifications for the high position conferred upon him, suggested that the first act of Sir James Graham as First Lord of the Admiralty, should be, "the cancelling of the appointment of Sir Fleetwood Pellew to the command of the Indian fleet after thirty-four years' servitude on the dry land." As events showed afterwards, this suggestion was by no means misplaced.‡

The appointment criticized in *The Times*.

Destruction of pirates by Admiral Pellew.

On the 9th August Admiral Pellew in the *Winchester*, accompanied by the *Spartan* and other men-of-war, left the harbour, returning on the 17th, having taken and destroyed during the cruize, a formidable fleet of pirates which were known to have associated together on the west coast where they had committed many depradations on peaceable trading vessels.

Murder of Europeans on board the *Arratoon Apcar* by Chinese.

The *Arratoon Apcar* left Hongkong for Calcutta early on the 5th August, and returned to the harbour next morning at eight o'clock, having in that short interval been the scene of one of the most direful and inexplicable of the tragedies on ship-board, which of late years had been so frequent. The vessel was commanded by Captain Henry Lovett, and besides Messrs. Skirving and Woodburn, the first and second mates, and a lad of seventeen or eighteen years of age, there were two other Europeans on board,—Mr. R. Scott Thomson, late Surgeon of the *Lady Mary Wood*, and Mr. John Smith, late master of the *Red Rover*. The crew consisted of twenty-one Lascars, one Manilaman, one Malay, and ten Chinese, with two Chinese passengers. The ship carried neither treasure nor valuable cargo. When she returned to the harbour under charge of the acting gunner and Indian crew, she brought back the murdered body of Captain Lovett, and his dog, but without any other European or any of the Chinese. The Lascars stated that, during the previous night, the Chinese had murdered the second mate and the captain, that Mr. Smith had leaped overboard, the other Europeans not being accounted for, and that the Chinese

The murderers escape.

* See Chap. XX., *infrà*, and Volume II., Chaps. LXXII. and LXXXIX.
† *Antè* Chap. XII., § III., p. 320.
‡ See his recall—end of section II. of this chapter.

Ch. XIV § I. 1853. had taken one ship's boat, cut the other adrift, and made for the shore, taking with them their own traps. At the inquest the Jury returned a verdict of wilful murder against the twelve Chinese, and severely censured the conduct of the Lascar portion of the crew, as meriting severe punishment. The Government offered a reward for the apprehension of the murderers who, however, do not appear to have ever been apprehended.

**Order of the Queen-in-Council of 13th June, 1853, abolishing Consular Ordinances and substituting a code.**

On the 11th August was published an "Order of Her Majesty in Council for the government of Her Majesty's subjects being within the Dominions of the Emperor of China, or being within any ship or vessel at a distance of not more than one hundred miles from the coast of China," which Order, dated the 13th day of June, 1853, abolished all the existing Consular Ordinances, and substituted a code.* This code, however, embodied a good portion of the provisions of the Ordinances, though the powers of Consuls or Consular Officers and the Superintendent of Trade were also considerably enlarged.

**Powers heretofore vested in the Supreme Court.**

The powers heretofore vested in the Supreme Court, however, in regard to civil appeals and committals for trial, did not appear to have been very much affected.

**Power for Superintendent and Consuls to make rules and to enforce by fine and imprisonment.**

By the Order, authority was vested in the "Chief Superintendent" as *such*, and not as "Chief Superintendent and Governor of Hongkong," and in the consuls, vice-consuls, etc., within their respective districts, subject to the approval of the Chief Superintendent to make and to enforce, by fine or imprisonment, such rules and regulations as to him or them might seem fit, for the observance of Treaties, and "for the peace, order, and good government of Her Majesty's subjects within the Dominions of the Emperor of China, etc."

**Civil suits. Appeals to the Supreme Court of Hongkong and to the Chief Superintendent.**

Her Britannic Majesty's consuls were further authorized to hear and decide, subject to appeal, all civil suits between British subjects, or between British subjects and Chinese, the appeal to be, in the former case, to the Supreme Court of Hongkong should the amount in dispute exceed $1,000; or if, in a suit between British subjects, the amount should be less than $1,000, to the Chief Superintendent.

Consuls were further empowered to inquire into all crimes and offences charged against any British subject, and on conviction to

* Rules of practice to be observed thereunder, under articles iii. and xxxvii. were published on the 20th October and the 15th November, 1853. See *Government Gazette* Nos. 5 and 9 of 1853. The list of fees receivable by Her Majesty's Consuls for the granting of probates or letters of administration under article xxxvii. was published on the 25th March, 1854. For further matters concerning Consular Jurisdiction in relation to the Supreme Court of Hongkong, see Volume I., Chap. IV., p. 115; Chap. XII., pp. 300, 318; Volume II., Chaps. XXXVII., XXXIX., XLII., XLIX. and LXXII.

inflict such punishment, according to the nature and degree of the offence, as they were authorized to do by the rules laid down in the above-mentioned order.

Breaches of rules and regulations made to ensure the due observance of Treaties were made punishable summarily, the penalty not to exceed $300, or three months' imprisonment.

Breaches of rules and regulations.

Breaches of rules and regulations other than those for the due observance of Treaties were made punishable by the Consul or Chief Superintendent, sitting with or without assessors, according to the degree of the offence—if without assessors, the utmost penalty not to exceed a fine of $200, or one month's imprisonment; if with assessors, $500, or three months' imprisonment.

Appeal from Consul or Vice-Consul to the Chief Superintendent.

In both those classes of cases an appeal lay from the Consul or Vice-Consul to the Chief Superintendent.

Case for trial before the Supreme Court of Hongkong.

For all other crimes and offences recognized as such by the law of England, the Chief Superintendent, consuls, and vice-consuls, within their respective districts, were empowered to inflict punishment not to exceed in any case a fine of $1,000, or twelve months' imprisonment, or to send the case for trial before the Supreme Court of Hongkong.

The power of deporting refractory subjects.

The power of deporting refractory subjects was further vested in consular officers.

Generally.

Such, in its broad outline, was the Order-in-Council, and such the nature of the powers and authorities vested in the Chief Superintendent of Trade, and his subordinate officers, to enable them to control the general body of British subjects resident in China, and to regulate their intercourse with one another and with the Chinese.*

Ordinance No. 1 of 1853.

On the 20th September, the Legislature passed Ordinance No. 1 of 1853 for the regulation of the Gaol of Hongkong.

Publication of first *Government Gazette*.

*The Government Gazette* of the Colony was published for the first time, on Saturday, the 24th September, 1853. Prior to that date, all Government Notifications had appeared in *The Daily Press* by contract, as to which, needless to say, bickerings not infrequently arose amongst those interested.

Order of Her Majesty in Council of 13th June, 1853, establishing Rules in appeals to the Queen-in-Council.

An Order of Her Majesty in Council, dated the 13th June, 1853, establishing Rules and Regulations in Appeals to the Queen-in-Council from the Colonies and India, was published on the 14th October.

* See further in reference to this Order and its working, Vol. II., Chap. XLII.

Ch. XLV § 1.

1853.

Mr. E. R. Michell replaces Lieutenant Pedder on leave.

On the 8th November, Lieutenant Pedder, the Harbour Master and Marine Magistrate, proceeded on leave of absence, his duties as a Marine Magistrate being performed by Mr. E. R. Michell* "under the general supervision of the Honourable C. B. Hillier, Esq." On the same date Government called for tenders for the conveyance of nine Chinese convicts to Penang.

Tenders for conveyance of convicts to Penang.

Determination of Chinese affairs.

Ordinance No. 3 of 1853.

Duties of Chinese tepos under Ordinance No. 13 of 1844 extended.

Settlement of civil suits among Chinese.

Code of laws by General Gough for the government of the Chinese community.

The Government apparently now seemed inclined to give the Chinese a freer hand than heretofore in the determination of affairs more immediately concerning themselves, and on the 2nd December the Legislature passed Ordinance No. 3 of 1853, entitled "An Ordinance to extend the duties of Chinese Tepos appointed under Ordinance No. 13 of 1844; to determine their emoluments; and to provide for the amicable settlement of civil suits among the Chinese population of Hongkong." When the Colony was first taken possession of, and it was quite uncertain whether its future rule would be entrusted to the chief of the garrison, General Gough drew up a code of laws for the government of the Chinese part of the community, the working of which was mainly to be confided to the people themselves; but, owing to the great opposition shown to the Chinese being given any share in the administration of justice, the matter dropped. The present Ordinance was therefore evidently meant as an experiment only.

Opposition to Chinese being given share in the administration of justice.

Ordinance No. 3 of 1853 experimental only.

The preamble.

A 'tepo.'

Ordinance No. 13 of 1844.

Paouchong and Paoukea Chinese peace officers.

First attempt at legislation for benefit of Chinese.

Main opposition to Chinese being

The preamble commenced as follows. "Whereas disputes occasionally arise among the Chinese population of this Colony which might be more conveniently and amicably settled by the tepo, aided by the respectable Chinese inhabitants, than before an English tribunal"—but what a 'tepo' was, there was no interpretation clause to tell. Ordinance No. 13 of 1844, "for the appointment and regulation of native Chinese peace officers [Paouchong and Paoukea]," was the first attempt at legislation for the benefit of the Chinese, but so little had been seen of the superior and inferior native Chinese peace officers appointed under that Ordinance, at the Courts, that what these were or what their functions consisted of, no one seemed to know. In providing Ordinance No. 13 of 1844, Sir John Davis doubtless was guided by the very best intentions, but, as in a good deal more of his governmental acts, not much success had so far attended the enactment, and the present Ordinance was by no means well received either. The main opposition to the Chinese being entrusted with the administration of the law at all was due to their corrupt notions of justice as compared with ourselves.

As the matter is of some importance, it is considered advisable here to reproduce what was said at the time upon the subject

* See *ante* Chap. XII. § II., p. 296.

SIR JOHN BOWRING.

by the local exponents of public opinion, and which fairly represents the state of affairs at the present time :— Ch. XIV § I.

1853.

entrusted with administration of the law.

Public opinion on the point.

"We have been, are, and always will be, the consistent opponents of giving the administration of the law into Chinese hands, and we do it on the strong belief we have, that from the Emperor on the throne to the beggar on the dung-hill, there is not a Chinese who is not prepared to lie and support his lie with an oath ; and further, that with the little existing power of public opinion, there is not one who is not prepared to be bribed ; for which reasons we are strongly opposed to the administration of justice by Chinese to Chinese in a British Colony. A pamphlet on the administration of the native laws in the Madras Presidency, written lately by a barrister, Mr. Norton, clearly showed that the fine, liberal measure, the permission given to the natives to govern themselves by their own laws, had been a perfect curse to them. Instances are piled up in which for a matter of litigation not exceeding ten rupees, and in some cases even less, the cases have been tried five times over. To talk of the uncertainty of English justice after that, is absurd.

"There are no more corrupt people upon earth than the Chinese, and even taking the Act at its best, what advantage of time and expense is gained by it? Suppose no bribery, still there was a tax leviable on the whole community. The assessors must be paid either by the public or the assessors ; they cannot be made to work without pay as Englishman do. The case is heard and decided by the tepo and assessors, but that does not end the matter ; it is again to be tried in the penetralia of the Chief Magistrate's brain ; wherein is time gained? There is no medium in this matter, either the Chinese must govern themselves wholly without English interference, or they must be governed by English laws, administered by Englishmen, without the clumsy superposition of a layer of Chinese law upon what will be, in reality, an Englishman's decision. The Government have, in this instance, followed out a system which it is highly desirable they should do on all occasions ; they publish the draft of an Ordinance upon which they call for public opinion. It remains with them to place a value upon that public opinion and to act thereon."

Both Ordinances Nos. 13 of 1844 and 3 of 1853 were repealed in 1857 by Ordinance No. 6 of that year, showing thereby that the measures had not been successful.

Ordinance No. 6 of 1857.

Ch. XIV § II.

1854.

Dr. Bowring appointed Governor of Hongkong and Her Majesty's Plenipotentiary, etc.

*The London Gazette* of the 10th January, 1854, contained the appointment of Dr. Bowring, Consul at Canton, now on leave of absence in England, as Governor of Hongkong, and Her Majesty's Plenipotentiary and Chief Superintendent of British Trade in China, and the mail which arrived in the Colony on the 26th February confirmed the report, which had long been current, that Dr. Bowring had been appointed successor to Sir George Bonham in all his offices. The appointment was well received by the English leading journals, metropolitan and provincial, and also locally.

English opinion.

On the 14th March, Dr. Bowring was presented to the Queen, when he received the honour of Knighthood. He arrived in Hongkong in the evening of the 12th April, and landed the next

Dr. Bowring presented to the Queen and knighted.

Ch. XIV § II. 1854.

morning with his family amidst the customary honours. At noon he was sworn into office; Colonel Caine, the Colonial Secretary, being sworn in at the same time as Lieutenant-Governor, the different Commissions being duly published the next day.

His arrival in Hongkong.

Colonel Caine, Lieutenant-Governor.

Mr. Mercer, Colonial Secretary *vice* Caine.

Colonel Griffin, R.A., commanding the troops, a member of the Executive Council.

Colonel Caine's Commission only effective in the absence of Sir John Bowring.

Mr. Mercer a member of the Executive Council.

Consequent upon the promotion of Colonel Caine, Mr. Mercer, the Colonial Treasurer, was appointed Colonial Secretary, and Colonel Griffin, of the Royal Artillery, as Commandant of the Forces, in the place of Major-General Jervois who had proceeded to England. Colonel Griffin was also accorded a seat in the Executive Council. It was therefore intended that, though Colonel Caine's commission was to be effective only in the absence of Sir John Bowring, yet the latter would not interfere in local matters except where his supreme authority was indispensable; and on the 15th April appeared a Government Notification "that all communications to the Government on matters regarding the Colony, were for the future to be addressed to the Colonial Secretary for submission to the Lieutenant-Governor." Mr. Mercer was at the same time gazetted a member of the Executive Council. This notification, as will be seen hereafter, was cancelled in June, 1855.

Departure of Sir George Bonham.

His policy in Hongkong.

Sir George Bonham left Hongkong on the 15th April for Singapore to spend a few days with his old friends in the Straits before returning to England. His policy was unfavourably commented upon, especially in regard to his interference with judicial decisions and the curtailing of the powers of the Supreme Court at every opportunity, though the latter had wanted nothing from him except a proper staff of interpreters. Whatever his policy, however, he left Hongkong full of honours and wealth, gained by a long career of official service in which he had steadily risen to his present position.

Supernumerary interpreters attached to Consular Establishment increased.

In regard to interpreters, it may here be noted that, availing himself of the occasion of the appointment of a new Chief Superintendent of Trade, the Foreign Secretary, the Earl of Clarendon, on the 11th February, informed the Lords Commissioners of the Treasury of his intention to increase the number of supernumerary interpreters attached to the consular establishment from three, the then number, to ten.

Mr. Bridges consults the Chief Justice upon a matter.

On the 3rd March, Mr. Bridges, the Barrister, sought the opinion of the Court upon a matter in connexion with an advertisement which had appeared that morning in a local paper in respect of the *Union Bread Company*. In reply, His Lord-

consulting surgeon, and that if the parties wished to go to law, they could do so,"—an appropriate answer under the circumstances

Ch. XIV § II. 1854.

The Chief Justice's reply: "The Court does not sit as a consulting surgeon."

On the 15th March, Government called for tenders for the passage of twenty-six Chinese convicts to Singapore.

Tenders for passage of Chinese convicts to Penang.

Severe strictures, it will be remembered, had been passed in England in the leading papers when Admiral Sir Fleetwood Pellew was first selected for the command of the East Indian Station, *The Times* notably, remonstrating with the greatest earnestness against the appointment.* This was due greatly to the fact that forty years had elapsed since Admiral Pellew had been at sea or actively engaged in the duties of his profession. Disagreeable events, partly arising from his cruelty, had frequently occurred while the Admiral, as Captain Pellew, had held command, and in cases where ships' companies had previously been remarkable for discipline and good conduct.

On the 8th November, 1853, a mutiny had taken place on board the Admiral's flagship, the *Winchester*, in the harbour of Hongkong, when the crew, who had not been permitted to go ashore for eighteen months,† resolved to send a petition to the Admiral on the subject. The only reply which the Admiral vouchsafed to it was, that the ship should be got ready to sea, in consequence of which disturbances occurred on board, in repressing which, two men were severely wounded. *The Times*, in the course of a long article highly detrimental to the Admiral, asked for his immediate recall and dismissal "from an employment for which he was clearly unfit."

The recall of Admiral Pellew.

On the 11th March, 1854, the P. & O. Steamer *Pekin* arrived in Hongkong with the English mail of the 24th January, conveying the news that Admiral Pellew had been recalled, and Rear-Admiral Sir John Sterling appointed in his stead. On Thursday, the 16th March, Admiral Pellew left the *Winchester* under a parting salute, in his barge manned by the officers of his ship for the *Barracouta*, on board of which vessel he hoisted his flag, and shortly afterwards the *Barracouta* steamed out of harbour for Trincomalee, where the Admiral left her and proceeded to England by mail steamer.

Admiral Sterling succeeds Admiral Pellew.

On the 11th May, Rear-Admiral Sterling arrived in Hongkong in H. M. S. *Barracouta*, and shortly afterwards shifted his

* See *antè* p. 335.

† One reason given for this afterwards was to avoid a certain disease rampant in Hongkong contracted by the men when on shore—See further on this subject. Chap. XIX., *infrà*.

Ch. XIV § 11. flag to the *Winchester*. He, however, did not remain long on the station, leaving for England in January, 1856,* Rear-Admiral Sir Michael Seymour, his successor, arriving in Hongkong in May following.

1854.

**Admiral Seymour as successor to Admiral Sterling.**

**Death of Lieutenant Pedder, the Marine Magistrate.**

On the 16th March, Lieutenant Pedder, R.N., the Harbour Master and Marine Magistrate, died at Ryde, in the Isle of Wight, whilst on leave.† He was succeeded by Captain Thomas Vernon Watkins, R.N., who assumed duties in the Colony on the 8th August, 1854. The notification regarding his appointment stated also that "all marine cases, save those connected with Chinese, would, in future, be entertained by the Marine Magistrate."

**Captain T. V. Watkins, R.N., replaces Lieutenant Pedder.**

**All marine cases, except Chinese, entertained by Marine Magistrate.**

By Lieutenant Pedder's death, the Government was deprived of the services of one of its oldest and most experienced officers. As will be recollected, he first joined the service in July, 1841, a few months after the cession of Hongkong ‡

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* "Death. On the 22nd April, 1865, at Woodbridge, Guildford, Admiral James Sterling, Knt., (formerly in China) in his 75th year." *Press Notice.*

† See *antè* p. 338.

‡ See Introduction, *antè* p. 9.

# CHAPTER XV.

## 1854.

Chief Justice Hulme leaves for England on sick leave.—Departure of Major-General Jervois and Captain Maclean, R.A.—Valedictory addresses to the Chief Justice before his departure by the community and the legal profession.—Supplementary address to the Chief Justice.—Mr. Sterling, acting Chief Justice.—Mr. Bridges, acting Attorney-General.—Chinese interpretation.—Professor of Chinese at King's College, London.—Encouragement held out by Foreign Office to students.—System hitherto in force.—Assistants in the Superintendency or Consulates.—The scheme of the Foreign Office. School of interpreters.—Precursor to Colonial system of student interpreters.—Mr. Summers, of Macao celebrity, as Chinese professor.—The Attorney-General on penalties attached to lottery advertisements.—Act 6 and 7 William IV. c. 66.—Free pardons on Queen's Birthday. Declaration of war against Russia.—Superintendency of Trade removed to Shanghai.—New Justices of the Peace.—Mr. Hillier, a member of the Executive Council.—Auxiliary Police Force.—Additional rate raised for payment of the Force.—Auxiliary Force disbanded.—June Criminal Sessions. Chun A Yee, a transported convict, found at large in the Colony.—The sentence. Regina *v.* Chun Chuen Tai and his wife, Chun Cheong She, for murder of Mr. Perkins, an American.—The facts.—Sentence of death.—The woman quick with child.—Sentence of death on the woman commuted.—Chun Chuen Tai executed.—Disgraceful execution.—Chun Chuen Tai's attempt to bribe the turnkey before his execution.—His offer reduced to writing.—The woman Chun Cheong She is afterwards pardoned.—Tenders for passage of Chinese convicts to Singapore.—Return of the Assistant Magistrate, Mr. W. H. Mitchell, after his divorce.—July Criminal Sessions. Nearly a maiden assize.—Death of P. C. Kingsmill after murdering his wife.—Admission of Mr. Cooper Turner as an attorney of the Court. His previous record.—His card.—Mr. T. Wade appointed interpreter of Chinese Customs, Shanghai.—The case of the Reverend William Baxter appointed Colonial Chaplain of Hongkong.—How he was appointed.—A matter calling for explanation.—Mr. Melville Portal, M.P., moves Parliament.—The complaint of the inhabitants of Fyfield.—The discussion in Parliament.—The Bishop of Victoria refuses to license Mr. Baxter.—Mr. Baxter called upon to resign.—Reverend M. C. Odell officiates.—Mr. Baxter leaves for Australia.—Reverend J. J. Irwin, Colonial Chaplain.—Return from leave of Mr. Trotter, Chief Justice's Clerk.—Mr. Bevan.—Sir John Davis made a K. C. B.—Local regret at the Chief Justice receiving no honorary distinction.—Passage to Western Australia for European convicts.—Return of Sir John Bowring to Hongkong.—Extension of leave to Mr. Cay, Registrar.—Sir John Bowring leaves for the north with Mr. Hillier and Mr. G. W. Caine, a son of Colonel Caine.—Mr. Gaskell asks for sanction for the promotion of a law society.—Mr. Sterling's encomium on law societies.—Entered on the records of the Court.—The Law Society started.—Rule of Court regulating Criminal Sessions and relating to Fees of Court.—Chinese convicts to Penang.—Mr. Masson, acting Registrar, *vice* Alexander on leave.—Year 1854 important in local events.—Change in the administration of Government, the Lieutenant-Governor assuming control of local affairs.—Ordinances during the year bear Colonel Caine's name.—Ordinance No. 3 of 1854 declaring certain acts of Parliament in force in the Colony.—Ordinance No. 4 of 1854.—Ordinance No. 5 of 1854.—Ordinance No. 6 of 1854.

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Chief Justice Hulme leaves for England on sick leave. Departure of Major-General Jervois and Captain Maclean, R.A.

THE Chief Justice, who had been in failing health for some time since his return from leave in February last year,* left for England on sick leave on the 12th April, with Major-General Jervois and Captain Maclean, R.A., the General's Secretary,† as fellow-passengers.

Before his departure, the leading European mercantile firms and residents of the Colony, as well as the members of the legal

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**Valedictory addresses to the Chief Justice before his departure by the community and the legal profession.**

profession presented His Lordship with the following addresses, showing the estimation in which he was held:—

Hongkong, 7th April, 1854.

To the Honourable
JOHN WALTER HULME, Esquire,
*Chief Justice*, Supreme Court.

Sir,—The period of your intended departure for England being so near, the undersigned, residents of this Colony, beg hereby to express the high respect they entertain for you in that elevated and most important official station which you have so long and so ably occupied here.

The satisfactory administration of the law in this place is infinitely more difficult than may be imagined by those who have not had an opportunity of witnessing the proceedings in Court. Perplexity is too often experienced from conflicting testimony on the part of Chinese witnesses, as well as from imperfect interpretation.

Many of us, from the first establishment of the Supreme Court in the Colony, have been in frequent attendance as Jurors, witnesses, or spectators; and all of us have had ample means of observing your patient, persevering mode of eliciting truthful testimony, your undeviating impartiality and uprightness, and your fair summing up of the evidence, leading to what is so generally deemed a just verdict.

Having thus testified to your high character on the Bench, we trust that you will here permit us to add the expression of our great esteem for you as a private gentleman, now one of the oldest residents amongst us.

Earnestly wishing for the early and complete restoration of your health, and that you may enjoy every happiness,

We respectfully remain, Sir,
Your most obedient, humble Servants,

Jardine, Matheson & Co.
Dent & Co.
Gibb, Livingston & Co.
John Burd & Co.
Lindsay & Co.
*For the P. & O. Steam Nav. Co.*
Robert S. Walker, *Superintendent.*
Phillips, Moore & Co.
Lyall, Still & Co.
Fletcher & Co.
Turner & Co.
Smith & Brimelow.
Lane, Crawford & Co.
Bowra & Co.
D. Lapraik.
*Per Oriental Bank Corporation*
P. Campbell.
MacEwen & Co.
David Jardine, M.L.C.
A. C. Maclean.
J. C. Bowring.
M. A. Macleod.
J. Goddard.
Edw. Pereira.
J. B. Compton.
Wilkinson Dent.
J. F. Edger, M.L.C.
Fred. H. Block.
William Meuling.
R. C. Antrobus.
W. H. Mourilyan.
Rob. S. Walker.
Robert B. Sherard.
Edw. Cohen.
N. Duns.
Geo. E. Maclean.
Geo. W. F. Norris.
G. Harper.
H. A. Ince.
T. C. Leslie.
Francis Chomley.
Edw. Reimers.
C. F. Still.
Robert Taylor.
William Hollmann.
A. Fletcher.
Arch. Campbell.
Y. J. Murrow.
W. Walkinshaw.
Phineas Ryrie.
James Smith.
J. W. Brimelow.
T. A. Lane.
W. Emeny.
Robert Strachan.

The following was the address from the members of the legal profession :— Chap. XV. 1854.

Hongkong, 11th April, 1854.

Sir,—It is the common wish of all the members of the profession who have the honour of practising under Your Lordship, to express regret at your approaching temporary absence. It has been to all of us most gratifying to see, as the head of our mutual profession in this Colony, a Magistrate, who, deeply versed in its most subtle technicalities, has yet shown to us that such skill can be combined with an enlarged and vigorous understanding. In Your Lordship, we have also found a most patient and painstaking Judge; and, by the mixture of dignity and urbanity which you have invariably shown, you have maintained in your Court that decorum which is one of the distinguished features of the tribunals of our mother country.

We have ever found Your Lordship impartial in your decisions, and during the ten years for which you have presided over the Supreme Court, there has been but one appeal from you to the Privy Council—and that decided against the appellant.*

Such then being our estimate of Your Lordship's character, we need not say how much we deplore that failing health should for a time deprive us of your presence. We trust that the trip Home may be attended with most beneficial effects to you, and that in the ensuing year we may again see you sitting in that judgment seat which you have so long adorned.

Paul I. Sterling.
William T. Bridges.
William Gaskell.
William Moresby.
Edward K. Stace.
Henry J. Tarrant.
Edward H. Pollard.

The replies of the Chief Justice were made verbally, and with much feeling and good taste, to the deputations which presented the addresses.

Supplementary address to the Chief Justice.

The following supplementary address, circulated both in the Colony and in Canton, and forwarded to the Chief Justice by the mail following his departure, by those who had not had an opportunity of signing the first one presented by the community, explains itself. Nothing could be more palpable than the deep regard, if not affection, and high respect in which Mr. Hulme was held. It was certainly not the ignominious conduct of Sir John Davis towards him which this time had prompted these emotional effusions. In a short time this fresh address received a large number of ready signatures, which, with the first address, exceeded in number those obtained after much solicitation, it is said, for both Governor Bonham, and General Jervois' together; thereby justifying the opinion expressed locally—that "had the same means been used with the address to the Judge, or had ordinary common sense been exercised in making its existence generally known, it would certainly have obtained twice the signatures of both the other addresses

* *Murroe* v. *Stuart*, 8 Moo. P. C. 267—heard before the Judicial Committee of the Privy Council on the 3rd February, 1853, the case being decided without the respondents being heard—see *antè* Chap. XIII. § II., pp. 328, 329.

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in point of numbers, and ten times their value in point of *sincerity of feeling*":—

The Honourable JOHN WALTER HULME, Esq.,
*Chief Justice of Honghong.*

Sir,—Feeling convinced that the comparatively limited number of signatures attached to the address presented to you prior to your departure for England on the 12th instant, affords a very inadequate criterion of the general estimation in which, both as a judge and a gentleman, you are held by the community, we deem it due to you and to ourselves to state, that none of us had an opportunity of signing the address, and many of us knew of it for the first time from the newspapers, after it had been presented.

Assuring you that we should otherwise have gladly availed ourselves of the occasion to testify our respect,

We have the honour to be, Sir,

Your very faithful Servants,

And. Shortrede.
Robt. P. D. Silver.
Geo. P. De Silver.
J. Willaume.
H. Marsh.
H. Winiberg.
F. Duddell.
G. Logan.
Robert Gordon.
F. S. Huffum.
A. Weiss.
Louis Heerman.
James A. Brooks.
W. H. Sutton.
Thos. Irwin.
M. W. Pitcher.
Pestonjee, Framjee, Cama & Co.
Ameeroodeen & Jafferbhoy.
P. & D. N. Camajee & Co.
George Wilkins.
H. Schaeffer.
C. Brodersen.
George Buchan.
Joseph M. Lord.
E. A. Still.
Rustomjee Byramjee & Co.
H. T. De Silver.
Meyer, Schaeffer & Co.
Wm. Pustau & Co.
F. Woods.
Dav. Glover.
William J. Preston.
William Harding.
Charles Markwick.
J. C. Hoey.
Chas. Archbold.
William Knight.
R. Markwick.
Marcus Hill Shaw.
John Scarth.

Edward Halton.
P. Campbell.
R. McGregor & Co.
E. Baldwin.
Richard Newby,
Agent for the Mercantile Bank of India, London, and China.
S. Mackenzie.
Lyall, Still & Co.
R. H. Chambers.
D. Kennedy & Co.
*Per Pro.* D. W. Mackenzie.
C. S. Lungrana.
Ezra & Judah.
Reiss & Co.
Gilman & Co.
W. W. Dale & Co.
J. A. Hulbert.
Moul & Co.
Henry Davis.
J. Marshall.
R. Gibbs.
Kessowjee Sewjee & Co.
Jacob Isaac.
Cowasjee Pestonjee.
Dadabhoy Hosungjee.
Bomanjee Eduljee.
Muncherjee Ruttonjee.
Muncherjee Nesserwanjee Mody.
Shaikally Meherally.
Dhunjeebhoy Poonjabhoy.
Pestonjee Dinshawjee.
Framjee Nowrojee.
Dinshawjee Framjee Cash.
Pestonjee Rustomjee.
Pallanjee Nesserwanjee.
T. Allana.
Cassumbhoy, Nathaboy & Co.
Nanjee Hassom.
Cowasjee, Pallanjee & Co.

Arch. E. H. Campbell.
W. H. Wardley & Co.
F. B. Johnson.
Birley & Co.
John Costerton,
Agent, Commercial Bank of India.
John Cardno,
Agent, Agra & U. S. Bank.
Charles Scholefield.
David Sassoon, Sons & Co.
Adam Scott.
H. F. Edwards.
Charles Taylor.
Chalmers & Co.
Blenkin, Rawson & Co.
P. & J. B. Colah.
Neave, Murray & Co.
Maxn. Fischer.
Ripley, Smith & Co.
Robert Gifford.
George de St. Croix.
A. W. G. Rusden.
H. D. Margesson.
Richard Rothwell.
Henry R. Hardie.
James S. Green.
Geo. Dent.
Pestonjee Rustomjee.
Heerjeebhoy, Ardaseer & Co.
Nesserwanjee Ardaseer Banjah.
Curtsetjee Hosunjee.
Limbjeebhoy Dhunjeebhoy.
Bomanjee Eduljee.
Jehangheer F. Buxey.
R. H. Camajee & Co.
D. N. Mody & Co.
M. N. Mody.
Alex. Gifford.
Wm. Ross.
Albert Leigh.
John Lamont.
Sam. Appleton.
David Dick.
Jno. Marshall.
John Pettigrew.
Peter Phillip.
Richard Scott.
L. F. Vieira Ribeiro.
A. Berenhart.
E. Oppert.
Thomas Spence.
S. A. Lubeck.
Thomas Jamieson.

Mr. Sterling, acting Chief Justice., Mr. Bridges, acting Attorney-General.

Consequent upon the departure of the Chief Justice, Mr. Sterling again became acting Chief Justice, and Mr. Bridges acting Attorney-General, the latter with a seat in the Legislative Council.

Chinese interpretation.

The question of Chinese interpretation, which had been of such moment up to this, now began to assume a practical form.

Professor of Chinese at King's College, London.

Encouragement held out by Foreign Office to students.

System hitherto in force.

Assistants in the

It appeared that King's College, London, having appointed a Professor of Chinese,* the Foreign Office held out, as an encouragement to diligent students, civil employment in China. The system hitherto in force was that young gentlemen, coming out to China for the purpose of entering the Government service, were allowed a grant of money per annum to induce them to study Chinese, and, on showing some proficiency in the language, places were found for them as assistants in the Super-

* Mr. Summers, of Macao fame [*antè* Chap. XI., p. 244], was the professor appointed. The following is the advertizement that appeared in reference to this appointment, in the *Athenæum* of the 22nd January, 1853 :—

CHINESE LANGUAGE AND LITERATURE,

*King's College, London.*

Professor Summers, late Tutor in St. Paul's College, Hongkong, will commence his course of Instruction in the classical language and colloquial dialect of China, on Monday, 23rd January, 1853, at three o'clock, etc., etc.

R. W. JELF, D.D.

King's College, London,
18th January, 1853.

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intendency of Trade or in the Consulates. Under the new system there was this advantage, that the Chinese student in England would, in the first instance, pursue his studies at his own expense, and that when superior diligence had marked him out as a proper object, he would come out to the service in Hongkong with some knowledge of the language. In connexion with the scheme the following paragraph appeared in a Home paper :—

**Superintendency or Consulates.**

**The scheme of the Foreign Office.**

**School of interpreters.**

"Government has placed certain civil appointments in China at the disposal of the Council of King's College. The students to be selected are to form a school of *interpreters* for the use of the British authorities at Hongkong ; and, if not needed there, they are to proceed under the direction of the Government to other stations."

**Precursor of Colonial system of student interpreters.**

**Mr. Summers, of Macao celebrity, as Chinese professor.**

This may really be said to have been the precursor of the Colonial system of student interpreters inaugurated in 1861,* but on its becoming known locally that the Chinese professor selected was Mr. Summers, known here as the originator of the unfortunate affair at Macao in June, 1849, an unfavourable aspect was taken of the scheme, as Mr. Summers was considered incompetent for the position, having only been a short time in Hongkong and being even then quite a young man,† and without experience of the Chinese language.

**The Attorney-General on penalties attached to lottery advertizements.**

**Act 6 and 7 William IV. c. 66.**

The acting Attorney-General, actuated by the best of motives, drew attention in the public press, on the 4th May, 1854, to the penalties the papers underwent on the subject of lottery advertizements as laid down by 6 and 7 Wm. IV., c. 66.

**Free pardons on Queen's Birthday.**

On the occasion of the Queen's Birthday, the Governor granted a free pardon to several prisoners confined in the Gaol.

**Declaration of war against Russia.**

News of the declaration of war, on the 28th March, by France and England combined against Russia, reached Hongkong on the 25th May. Immediately a Government Notification appeared removing the Superintendency of Trade to Shanghai where it was directed all communications should be addressed, the Admiral proceeding the same day in the *Winchester* to the north, and the Governor and suite in the *Barracouta* to Shanghai. Colonel Caine was left in sole charge of the Colony, with entire control over local affairs, as Lieutenant-Governor.

**Superintendency of Trade removed to Shanghai.**

**New Justices of the Peace.**

**Mr. Hillier,**

On the 29th May, a list of eight new Justices of the Peace was duly published, and Mr. Hillier gazetted a provisional member of the Executive Council.

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* See Vol. II., Chap. XXXIII., of this work.

† See note to page 248, *antè* Chap. XI. At the time of the Macao incident, as before recorded, it would appear that Mr. Summers was not more than 'eighteen or nineteen years of age' (see *antè* Chap. XI., p. 244)—so that at this period, he could only have been at the most about twenty-four years of age. Nor is it clear whom he succeeded as Professor of Chinese at King's College. As will be remembered, already a former Hongkong official had held a similar position in the person of Mr. S. Fearon, as recorded in Chap. V. § II., *antè* p. 127.

An auxiliary Police Force was formed on the 1st June to protect the lives and property of the inhabitants, during the absence of the British men-of-war, and an additional rate was raised, under the power given by a recent Ordinance [No. 1 of 1854] for the payment of such extra force. A Government Notification to this effect appeared on the 10th June, but on the 11th July, owing to the altered circumstances and more secure state of the Colony, the Lieutenant-Governor informed the community that the auxiliary force had been disbanded on the 5th of that month.

Auxiliary Police Force.

Additional rate raised for payment of the Force.

Auxiliary Force disbanded.

An extra Sessions of the Criminal Court was held on the 15th June. The first case was that of Chun Ayee who had been sentenced in 1847 to fifteen years' transportation and sent to Penang on the 28th May, 1848, and who, never having been pardoned, was found at large in the Colony.* He was now sentenced to one year's imprisonment with hard labour, and at the termination of the sentence to be transported for life. The next case was one that had caused some sensation in the Colony, and was that of Chun Chuen Tai and his wife Chun Cheong She for murder. The prisoners were indicted on four counts in respect of the murder of a Mr. George Perkins, an American, who had arrived in the Colony on the 15th May from the Sandwich Islands. When off the Lema, a Hongkong 'hakow-boat'† was engaged to take Mr. Perkins to Macao with his luggage, but Mr. Perkins never reached Macao nor was his body ever recovered. The prisoners were afterwards captured. From the evidence it appeared that at about eight o'clock at night, while he was asleep, the male prisoner with a spear stabbed the deceased to death, and with his wife threw the body overboard. Both prisoners being found guilty were sentenced to death, the acting Chief Justice informing the female prisoner, who had pleaded that she was quick with child, that she would be respited until her plea of being pregnant was found true or not. This plea, it may be observed, was the first and is the only one of its nature to be traced in the records.

June Criminal Sessions.

Chun A Yee, a transported convict, found at large in the Colony.

The sentence.

Regina *v.* Chun Chuen Tai and his wife, Chun Cheong She, for murder of Mr. Perkins, an American.

The facts.

Sentence of death.

The woman quick with child.

On the 24th June *The Government Gazette* published a proclamation by the Lieutenant-Governor declaring that the sentence of death passed on the woman Chun Cheong She had been commuted to transportation for life, and Chun Chuen Tai was executed on the 27th June. The scene on the scaffold was described as disgraceful. The condemned man's arms were so much at liberty that, after hanging three or four minutes, he got hold of the rope above his head with his right hand and fairly drew his breath on two occasions. After hanging five minutes

Sentence of death on the woman commuted.

Chun Chuen Tai executed.

Disgraceful execution.

* See this case referred to *antè* Chap. x., p. 198.

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Chun Chuen Tai's attempt to bribe the turnkey before his execution.

finding his trousers falling off, he deliberately but unsuccessfully attempted to fasten them round his waist. The man was represented as "strangling for twenty minutes before he was dead." As thoroughly illustrative of the Chinese character, an episode in connexion with this murderer may be mentioned. After his conviction he attempted to tamper with the turnkey placed in charge of him, by actually proposing to this officer that, if he would allow him to escape, he in return would give him the gold watch taken from Mr. Perkins, the latter's clothes, and $150 found in Mr. Perkins' trunks, and a further sum of $300! This offer he reduced to writing and drew out a personal order upon the individual who had taken the most active part in his capture.

His offer reduced to writing.

The woman Chun Cheong She afterwards pardoned.

The Governor, in the exercise of his prerogative, afterwards granted a free pardon to the woman Chun Cheong She on the occasion of the Queen's Birthday in 1855.

Tenders for passage of Chinese convicts to Singapore.

On the 15th June the Government called for tenders for the conveyance to Singapore of twenty-nine Chinese convicts.

Return of the Assistant Magistrate, Mr. W. H. Mitchell, after his divorce.

After his divorce suit in England,* Mr. W. H. Mitchell, Assistant Magistrate, Sheriff, and Coroner, returned to the Colony and resumed duties on the 26th June.

July Criminal Sessions. Nearly a maiden assize.

On Saturday, the 15th July, there was a sitting of the Criminal Sessions of the Supreme Court which was as nearly as possible a "maiden assize," there being only one case,—the only instance since the foundation of the Colony. It was a case of abduction, wherein a verdict of not guilty was returned.

Death of P. C. Kingsmill after murdering his wife.

Police Constable Kingsmill, against whom a Coroner's Jury, on the 14th July, had returned a verdict of wilful murder of his wife by striking her the day before on the head with a heavy stick, died in Gaol on Tuesday morning, the 18th July. Both were addicted to drink.

Admission of Mr. Cooper Turner as an attorney of the Court.

His previous record.

Mr. Cooper Turner, described as "late of Sydney, Australia, *Crown Solicitor,*" *arrived from England on the 16th July*, and was admitted to practise in the Courts of the Colony on the 19th of the same month. He was also a solicitor on the rolls of the Court in California. Shortly after appeared the following notice in the local press:—

His card.

A CARD.

Mr. G. Cooper Turner, Solicitor and Notary Public, Office, Queen's Road, opposite the Oriental Bank, Hongkong, 25th July, 1854.

Mr. T. Wade appointed interpreter

On the 27th July, Mr. Thomas Wade was gazetted "Inter-

* *Antè* Chap. XIV. § I., p. 333.

preter of Chinese Customs at Shanghai," having resigned his Vice-Consulship there.*

Chap. XV. — 1854. of Chinese Customs, Shanghai.

The case of the Reverend William Baxter, appointed Colonial Chaplain of Hongkong.

How he was appointed.

A matter calling for explanation.

Mr. Melville Portal, M.P., moves Parliament.

The complaint of the inhabitants of Fyfield.

The discussion in Parliament.

As a matter not entirely unconnected with law and justice, and which formed the subject of parliamentary debate, it may not be inappropriate to mention here the case of the Reverend Mr. William Baxter, the Colonial Chaplain of Hongkong, which happened in August of this year. This gentleman, who had held the rectory of Fyfield, Hants, on appointment by the Home Government, consequent upon an exchange of livings which he had effected with the Reverend Mr. Stedman, the Colonial Chaplain in Hongkong, arrived in the Colony to assume the duties of his office on the 3rd August, by the ship *John Bunyan*. But a matter now happened in regard to the newly-appointed chaplain which certainly called for explanation. Mr. Melville Portal, member for North Hants, after Mr. Baxter had left for the scene of his labours, rose, in the House of Commons, to call the attention of the Government to matters affecting the church, as referred to in a petition entrusted to him by certain inhabitants of the parish of Fyfield. According to *The Times* of the 12th May, Mr. Portal, in alluding to the scandal said that—

"The parishioners of Fyfield complained that, since the year 1851, the rectory, which is in the gift of the Lord Chancellor, had been suffered to be exchanged no less than three times. On the second occasion the rector exchanged it, with the consent of the Lord Chancellor, with the Rev. William Baxter for a mastership in the college school at Cheltenham. Mr. Baxter held the living scarcely three years; and a few weeks afterwards suddenly absconded on a Sunday, after morning service, deeply in debt to most of the tradesmen in the neighbourhood, and carrying with him certain parish funds and charitable monies which were in his charge. He had previously made an assignment of his effects for the benefit of his creditors. His parishioners heard nothing of him until they saw it announced that he had been appointed civil chaplain at Hongkong [a laugh]. The circumstance was one which called for explanation and he hoped the noble lord would be able to give it.

Lord J. Russell said the Rev. Mr. Baxter had exchanged his living with the Rev. Mr. Stedman for the civil chaplaincy at Hongkong. The only part of the transaction with which the Lord Chancellor had anything to do was the induction of the Rev. Mr. Stedman into the rectorship of Fyfield. No imputation was cast upon Mr. Stedman. The Lord Chancellor made particular inquiries respecting him at Hongkong, and received the highest testimonials as to his character and abilities, and his lordship being satisfied with them, appointed Mr. Stedman to the rectorship [hear, hear]. The part of the transaction which referred to the Rev. Mr. Baxter's appointment to the chaplaincy at Hongkong would be explained by the Under-Secretary for the Colonies.

Mr. F. Peel said that when application was made to the Colonial Office to sanction the exchange of appointments between Mr. Stedman and Mr. Baxter,

* See *antè* Chap. XIV. § I., p. 331.

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the Duke of Newcastle took the usual course in such cases, by addressing a letter to the Bishop of Winchester in the following terms :—

Colonial Office,
January 9.

My Lord,—I have the honour to transmit to Your Lordship the copies of two letters, addressed to me by the Rev. S. W. Stedman, Colonial Chaplain at Hongkong, relative to an exchange of appointments which he is desirous to effect, and in which he apprises me that the Rev. W. Baxter, the incumbent of Fyfield, in Hampshire, is willing, and has permission, to exchange the living he holds.

Before giving my final sanction to their arrangement, I should be obliged by Your Lordship informing me whether you consider Mr. Baxter to be well qualified to fill the Colonial Chaplaincy, or whether there exists any objection, of which I am not aware, to the proposed exchange of appointments.

I have, etc.,
NEWCASTLE.

The Lord Bishop of Winchester.

To this letter the Duke of Newcastle received the following reply from the Bishop of Winchester :—

Farnham Castle,
January 10.

My Lord Duke,—I have the honour to acknowledge the receipt of Your Grace's letter of the 9th instant, with enclosures relative to the proposed exchange between the Chaplain of Hongkong and the Rector of Fyfield, Hants.

The Rev. Mr. Baxter, Rector of Fyfield, is highly respectable, and, as far as I am aware, well qualified to perform the duties of a Colonial Chaplaincy efficiently [laughter].

I am not acquainted with Mr. Stedman, but as far as regards Mr. Baxter I am not aware of any objection to the exchange.

I have, etc.,
C. WINTON.

His Grace the Duke of Newcastle.

Having received such a letter as that, the Duke of Newcastle, of course, felt himself authorized to consent to the proposed arrangement [hear, hear]."

**The Bishop of Victoria refuses to license Mr. Baxter.**

In the meantime, pending the reply of Mr. Baxter to the serious charges brought against him, the Bishop of Victoria refused to license Mr. Baxter to the Colonial Chaplaincy, or to allow him to officiate in St. John's Cathedral. It may here be mentioned that the chaplaincy was worth £700 a year, while the value of the rectory of Fyfield was not stated. In January, 1855, Mr. Baxter was called upon, by direction of the Secretary of State, to resign his appointment, his explanations having been referred by the Bishop to his late diocesan, the Bishop of Winchester, who had regarded them unfavourably, and, on the 30th January, appeared a Government Notification

**Mr. Baxter called upon to resign.**

**Reverend M. C. Odell officiates.**

**Mr. Baxter leaves for**

appointed to discharge temporarily the duties of Colonial Chaplain, in place of the Reverend W. Baxter, resigned." The latter, with his family, left for Melbourne on the 24th March, 1855, the Reverend J. J. Irwin, his successor in Hongkong, arriving here on the 30th June following.

Chap. XV. 1855. Reverend J. J. Irwin, Colonial Chaplain.

Mr. G. A. Trotter, Clerk to the Chief Justice, having reported his return to the Colony* on the 8th August, Mr. Bevan's duties in that capacity ceased from that date.

Return from leave of Mr. Trotter, Chief Justice's Clerk. Mr. Bevan.

The news now reached Hongkong that Sir John Davis had been made a Knight Commander of the Civil Division of the Order of the Bath. For general services, Sir John Davis was certainly as much entitled to such an honour as his successor Sir George Bonham had been considered to be, but one could not help thinking, in connexion with Sir John Davis, that whilst honours were being given away, the respected Chief Justice Hulme, who was now on sick leave in England, should not have been overlooked by the Queen's advisers. A knighthood, at least, it was considered, would have been well bestowed on one who was every inch a gentleman, and of whose fitness for the high office he held there never existed two opinions,—which "was more than could be said of the other gentlemen above mentioned."

Sir John Davis made a K. C. B.

Local regret at the Chief Justice receiving no honorary distinction.

The Government advertized on the 17th August for a passage to Perth, Western Australia, for three European convicts. On the 20th Sir John Bowring and suite returned to Hongkong, and on the 29th of the same month it was announced that Mr. Cay, the Registrar of the Supreme Court, had obtained an extension of twelve months' leave of absence.†

Passage to Western Australia for European convicts.

Return of Sir John Bowring to Hongkong.

Extension of leave to Mr. Cay, Registrar.

In September Sir John Bowring again left for the north being accompanied this time amongst others by Mr. Hillier, the Chief Magistrate, and Mr. George Whittingham Caine, a junior clerk in the Plenipotentiary's Department, a son of Colonel Caine, and of whom more anon.‡ Mr. W. H. Mitchell performed Mr. Hillier's duties during his absence. The Governor, with his party, returned at the latter end of November.

Sir John Bowring leaves for the north with Mr. Hillier and Mr. G. W. Caine, a son of Colonel Caine.

On Saturday, the 28th October, before the Court rose, Mr. W. Gaskell, as the senior member of the bar, wished to obtain the countenance and sanction of the acting Chief Justice for the formation of a law society.

Mr. Gaskell asks for sanction for the promotion of a law society

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* See *antè* Chap. XIV. § I., p. 331.

† See *antè* Chap. XIV. § I., p. 332.

‡ See Chap. XX., *infrà*, and Chap. LIX., Vol. II. of this work.

Chap. XV.

1854.

Mr. Sterling's encomium on law societies.

Entered on the records of the Court.

The Law Society started.

Mr. Sterling passed an encomium on law societies, and hoped that the one about to be established would be found of benefit to the profession, and graciously permitted a notice of it to be entered on the records of the Court. Although the Law Society was formally started and took an active part in January, 1858, upon the question of the amalgamation of the two branches of the legal profession,* it does not appear to have done much more, and the records after that period show nothing more in reference to it.

Rule of Court regulating Criminal Sessions and relating to Fees of Court.

A Rule of Court, dated the 31st October, 1854, was passed and published on that date, regulating the number of Criminal Sessions to be holden in the year, and amending otherwise schedule 7 of the *Regula Generalis* of the 1st March, 1847, relating to fees in the Supreme Court.† This order, it was notified on the 5th April, 1855, had been confirmed by the Secretary of State for the Colonies.

Conveyance of Chinese convicts to Penang.

On the 15th November, a passage for eight Chinese convicts to Penang was advertized for.

Mr. Masson, acting Registrar, *vice* Alexander, on leave.

Mr. Alexander, the acting Registrar,‡ having obtained leave of absence on the 2nd December, Mr. Norman Ramsay Masson, a clerk in the Registrar-General's Office, was appointed his successor *pro tem.* Mr. Alexander resumed duties on the 2nd April, 1855.

Year 1854 important in local events. Change in the administration of Government, the Lieutenant-Governor assuming control of local affairs. Ordinances during the year bear Colonel Caine's name.

As may be seen, the year 1854 proved an important one in local events, the most important of them being the change in the administration of the Government by which the Lieutenant-Governor for the time being assumed the control of local affairs, all the Ordinances promulgated during the year bearing his name. The recall of Vice-Admiral Sir Fleetwood Pellew; the death of Lieutenant Pedder; the departure of the respected Chief Justice, amidst general regrets, on leave of absence for the second time owing to repeated attacks of illness, after a short tenure of office only since his return to duty; the declaration of war with Russia; and the extraordinary and impudent case of the Reverend Mr. Baxter, appointed to the Colonial Chaplaincy of Hongkong, were not by themselves the least interesting events chronicled.

Ordinance No. 3 of 1854 declaring

Amongst the important Ordinances passed during this year may be mentioned Ordinance No. 3 of 1854, entitled "An Ordinance to declare certain Acts of the Imperial Parliament to be in force

* See Chap. XX., *ubi supra.*
† See *antè* Chap. V. § II., p. 130.
‡ *Antè* Chap. XIV. § I., p. 332.

in the Colony ;"* Ordinance No. 4 of 1854, reducing the number of jurymen from eighteen to ten ; Ordinance No. 5 of 1854, amending and extending Ordinance No. 9 of 1845, entitled "An Ordinance to invest the Supreme Court of Hongkong with a Summary Jurisdiction in certain cases ;" and Ordinance No. 6 of 1854, providing "for the disposal of Unclaimed Balances of the Estates of Persons dying intestate within the Colony of Hongkong."

Chap. XV. 1854. certain acts of Parliament in force in the Colony. Ordinance No. 4 of 1854. Ordinance No. 5 of 1854. Ordinance No. 6 of 1854.

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* The following is the Schedule of the Acts of Parliament to which the Ordinance referred :—

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|---|---|---|
| 6 and 7 Vict., | Cap. 34. | An Act for the better apprehension of certain offenders. |
| " | " 85. | An Act for improving the Law of Evidence. |
| " | " 96. | An Act to amend the Law respecting defamatory Words and Libel. |
| 7 and 8 | " 62. | An Act to amend the Law as to burning farm buildings. |
| 8 and 9 | " 47. | An Act for the further prevention of the offence of Dog stealing. |
| 9 and 10 | " 25. | An Act for preventing malicious injuries to persons and property by fire, or by explosive or destructive substancer. |
| 10 and 11 | " 66. | An Act for extending the provisions of the law respecting threatening letters and accusing parties with a view to extort money. |
| 14 and 15 | " 19. | An Act for the better prevention of offences. |
| 15 and 16 | " 24. | An Act for the amendment of an Act passed in the first year of the reign of Her Majesty Queen Victoria, intituled "An Act for the amendment of the Laws with respect to Wills." |

# CHAPTER XVI.

## 1855-1856.

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## SECTION I.

## 1855.

Ordinance No. 1 of 1855, enforcing neutrality during contest in China.—Commission of inquiry as to fees received by Government officers.—Treaty of Commerce with Siam.—Return of Chief Justice Hulme from leave in indifferent health.—Departure of Mr. Sterling, Attorney-General, on leave.—Mr. Bridges acts.—Illicit gambling and extortion practised by subordinate officials in Government Offices.—Extensive gambling establishments in the Colony.—Payments to office coolies in the Supreme Court, Police Court, and Police Offices.—Confession of gambling-house keeper.—Confirmatory evidence.—Arrest of the offenders.—Keeper fined, establishment broken up, and coolies committed for trial.—Prosecution abandoned.—Lieutenant-Colonel Hope Graham, a member of the Executive Council.—Crimean war.—Bishop of Victoria's proposal for a day of fast and humiliation.—Governor's refusal without instructions from Secretary of State.—Decision of Secretary of State that Proclamation of a Fast is reserved to the Sovereign by Order-in-Council.—Free pardons on Queen's Birthday.—Colonel Caine appointed senior member of the Legislative Council.—Secretary of State's directions as to communications concerning the Colony.—Colonel Caine as Lieutenant-Governor only authorized to act in absence of Governor.—His position almost a sinecure.—Lieutenant-Governor with precedence over Chief Justice.—Conviction of the brothers Chui Ah Sam, pirates, brother and nephew of Chui Apo.—Sentence of death on Lee Akung for murder.—His execution.—Government Notification that knowledge of Chinese ground for promotion in the service.—Mr. Caldwell resigns offices of General Interpreter and Assistant Superintendent of Police.—Discontent at his position.—Inspired articles in the Press at probable result if he resigned.—Mr. Caldwell's resignation accepted.—Government expression of regret.—Mr. Wade appointed Chinese Secretary to the Superintendent of Trade in Hongkong.—Mr. Grand-Pré appointed to replace Mr. Caldwell.—Mr. Grand-Pré an alien. His appointment unfavourably commented upon.—The Government in a dilemma for interpreters.—A qualified interpreter advertized for for the Chief Magistrate's office.—Frequent robberies in the town.—The Chief Magistrate robbed.—Heavy robbery in the Gaol.—European subordinates suspected.—Upwards of £90 abstracted.—Small pay allowed the Gaol subordinates.—Turnkeys committed for trial.—Prosecution abandoned.—A discharged seaman sues the gaoler for moneys deposited by him.—Ordinance No. 1 of 1854.—The defence.—Chief Justice decides Sheriff the proper person to be sued.—Chief Justice's suggestion of a memorial to the Governor.—Disturbance at a public auction of Crown lands.—Messrs. Jardine, Matheson, & Co., and the threats held out to the Chinese.—Government issue a warning as to consequences of interfering with land sales.—The Act 18 and 19 Vict. c. 104 for regulating Chinese passenger ships.—Fresh list of Justices of the Peace.—The American Consul, Mr. Keenan, rescues a prisoner.—The facts.—Rescued by trickery and taken on board an American man-of-war.—Mr. May goes on board.—No assistance given him.—Local acrimony against the Consul's behaviour.—The Americans address a letter of approval to their Consul.—Arrest and committal for trial of the Consul.—Charge abandoned on the advice of the acting Attorney-General.—The reason.—Eccentricity of Mr. Keenan.—Case of the *Annie Bucknam*.—Mr. Mitchell and his refusal to extend to Mr. Keenan the customary courtesy of offering Foreign Consul a seat on the Bench.—Proclamation of Sir John Bowring to the Chinese regarding seditious movement against Empire of China.—Hongkong and the laws of England.—Mr. Sterling appointed Puisne Judge at Ceylon. His career in Hongkong.—Local opinion.—Continued illness of the Chief Justice. Block in business.—Governor appoints a Commission to hold the Criminal Sessions.—Ordinance No. 6 of 1846.—Mr. Kingsmill appointed to discharge duties of Attorney-General at the Sessions.—November Criminal Sessions postponed. Governor appoints the same Commission.—Complete stagnation of Court work on the civil side.—Mr. Day appointed to hold a Court of Summary Jurisdiction.—Important legislative measures in 1855.—Ordinance No. 2 of 1855.—Ordinance No. 5 of 1855.—Ordinance No. 6 of 1855.

## SECTION II.

## 1856.

Continued illness of Chief Justice Hulme. Mr. Day appointed to sit in his place.—Ordinance No. 6 of 1845, section 5.—Continued disturbances in China.—Ordinance No. 1 of 1856.—Ordinance No. 1 of 1855 enforcing neutrality.—Appointment of Mr. T. C. Anstey as Attorney-General in the place of Mr. Sterling.—His previous career.—Biographical notices.—Mr. Anstey as a Law Commissioner.—*The Liverpool Albion* on Mr. Anstey's appointment.—He goes to China in a "diabolic frame of mind."—Local hopes.—A system of gaol delivery.—Escape of convicts.—Mr. Bridges, acting Attorney-General, leaves for England without waiting for Mr. Anstey.—He anticipates Chief Justice's early retirement.—Dinner given to him.—No Criminal Sessions held in January.—The long tale of Police and Prison misgovernment.—Coroner's inquest.—Cells under Police Station 'a *sink* of iniquity.'—Verdict of the Jury.—Arrival of Mr. Anstey.—Date of his departure from London.—Governor appoints him to sit for Chief Justice in lieu of Mr. Day.—Ordinance No. 6 of 1845, section 5.—Mr. Anstey gazetted to a seat in the Legislative Council.—Ordinances Nos. 2 and 3 of 1856.—Mr. Anstey officiates for the Chief Justice on the Summary side.—His want of knowledge of the Chinese character.—He fines a plaintiff and his witness for perjury.—Mr. Caldwell's loss as an interpreter.—Rules of the Bar occasionally infringed.—Rules of etiquette drawn up by Mr. Anstey.—The circular and memorandum.—The view taken of the memorandum.—The Chief Justice not consulted.—The authority of barristers to appear in Consular Courts.—Messrs. Bridges, Kingsmill, and Green memorialize the Earl of Clarendon.—Sir John Bowring suggests matter be referred Home and the question of the right meanwhile suspended.—The Chief Justice's decision and offer.—The right recognized by the Foreign Office.—The egregious blunder in refusing the right.—Privileges extended to the English and American Bar by each other's Consulates.—First time an English Crown lawyer permitted to appear in an American Court of Justice since Declaration of Independence.—Recovery of the Chief Justice. He presides at the February Sessions.—The community welcome his return to the Bench.—No Chinese Interpreter present until late in the afternoon.—Mr. Anstey's first appearance as Attorney-General.—Two Chinese witnesses committed for perjury.—Heavy calendar.—Large number sentenced to death.—Doubts as to guilt of some.—Commutation of sentences.—Increase of Police Force.—Execution of Shun Ah Muen and Lee Ah Foo.—Disgraceful conduct of the Police at an extensive fire in the town.—Thefts by Indian Police.—Spoliation by European and American element in the Force.—Mr. Anstey gazetted a Justice of the Peace.—Ordinances Nos. 5, 6, and 7 of 1856.—Law relating to contracts with British subjects on Chinese territory by Chinese subjects for cession of property in China.—Opinion of Mr. Bridges that the Chinese are beyond the pale of civilized nations repudiated by Home Government.—The opinion of the law officers of the Crown.—Commission to inquire into constitution of Police Force. Inspection of Police Force by Sir John Bowring.—Numerous desertions from the 59th Regiment.—Nine found on board an American whaler.—Mr. Hillier, Chief Magistrate. Charges of gross carelessness.—How Mr. Anstey characterized the depositions taken by Mr. Hillier.—Regina *v.* Forest, Wise, Oliver, and Ayow.—The Chief Justice directs Mr. Hillier to be sent for.—Extraordinary scene between the Court, Mr. Hillier, and the Attorney-General. Mr. Hillier claims the protection of the Court against Mr. Anstey.—The Magistrate and the Coroner merely thought it necessary to write down "that one witness corroborated the other."—Conviction of Forest and others for burglary.—Mr. Hillier's re-appearance in Court. His demand "for restraining the Attorney-General," repeated.—He asks the Chief Justice for a memorandum as to what evidence he is to take down.—The Chief Justice's demeanour and reply.—The jury and others as spectators during the scene of crimination and recrimination.—The real value of depositions taken *in extenso* disclosed.—Scene between Mr. Anstey, Mr. Hillier, and Mr. Mitchell.—Mr. Mitchell admonished by the Chief Justice.—Discussion as to the nature of testimony.—Chief Justice says Attorney-General will draw up a memorandum for guidance of the Magistrates.—Mr. Anstey on the 'not very creditable state of affairs' as to the Magistrates.—Further fencing between Mr. Hillier and Mr. Anstey.—Criminal cases of the worst description against the Police.—Conviction of Indian Police for extortion.—P.C. Brady charged with robbery.—Case against P.C. Carvalho for attempted extortion.—Police reformation the crying want.—Prisoners and the assistance of counsel.—Messrs. Kingsmill and Cooper Turner appointed in Court to defend a European prisoner.—Interpretation again. Criminal Sessions end abruptly owing to the want of an interpreter.—Mr. Anstey's opinion of the interpretation.—The Chief Justice says he has recommended the re-employment of Mr. Caldwell.—Death of Goodings, the gaoler.—Death of Mr. C. Bowring, the Governor's father.—The attorneys of the Court memorialize the Chief Justice for a suspension of Ordinances Nos. 5 and 7 of 1856.—They wish to obtain the necessary books of practice and Acts of Parliament.—The Governor's refusal. Improper conduct of Mr. Anstey as regards the Chief Justice in the matter.—Sir John Bowring criticized.—The attorneys hold a meeting to procure that Ordinances affecting them be published in future before being passed.—April Criminal Sessions.—Resignation of the Registrarship by Mr. Cay.—Appointment of Mr. Alexander as Registrar. Mr. N. R. Masson, Deputy Registrar.—Mr. Hillier appointed Her Majesty's Consul at Siam.—His departure.—His long and honourable career in the Colony.—The farewell given him as a popular officer.—His

death not long after.--Public opinion of Mr. Hillier in Hongkong.—His funeral in Bangkok.—Changes on Mr. Hillier's departure for Bangkok.—Mr. H. T. Davies appointed Chief Magistrate of Hongkong.--Admiral Seymour appointed Naval Commander-in-Chief *vice* Sterling.—Mr. Anstey holds an inquiry respecting expenses of civil procedure and practice, etc.—Passing of Ordinance No. 14 of 1856 as the result.—Departure of Lieutenant-Colonel Graham. Lieutenant-Colonel Dunlop acts and is made a member of the Executive Council.—Execution of Samarang for murder.—Place of execution.—Samarang's cruel and disgusting execution.—Previous execution spot.--The gallows after executions remain exposed to public view.—A protest.—Ordinance No. 10 of 1856. Lis Pendens and Purchasers.—Mr. Anstey slanders the Chief Justice.—He charges the Chief Justice with having exceeded the bounds of temperance.—Sympathetic and indignant protest by the community and the legal profession.--Mr. Anstey repeats the charge.—The Secretary of State takes a different view.--The despatch.—Mr. Anstey afterwards makes public reparation to the Chief Justice.—Indignation which Mr. Anstey's conduct aroused.—Character of Sir John Bowring from 'the Journal of T. S. Raikes, Esquire.'—Mr. Anstey confirmed as a member of the Legislative Council.—Ordinance No. 13 of 1856.—Yung Awing, an articled clerk to Mr. Parsons, objected to as an interpreter of the Court.—Mr. Anstey's opinion that Yung Awing's appointment incompatible with the provisions of Ordinance No. 13 of 1856.—His resignation.—Gaol misgovernment. Mr. Anstey files a criminal information against the Sheriff, Mr. Mitchell, for a misdemeanour.--The charges.--The facts.—Mr. Mitchell advised certain prisoners to write to their friends for money to pay for certain charges.— Mr. Anstey makes an inquiry.—Sir John Bowring's attitude of indifference.—He is 'doubtful of his power to control the Attorney-General.'—The war of mutual attack between Mr. Mitchell and Mr. Anstey.—Mr. Mitchell informs Sir John Bowring he is only defending himself against Mr. Anstey's attacks.—The Governor's reply to Mr. Mitchell and the latter's action for defamation against Mr. Anstey.—Mr. Mitchell informs Sir John Bowring the difficulty admits of no compromise.—Case against Mr. Mitchell by Mr. Anstey fixed for hearing.—In the case of Mr. Mitchell against him for slander, Mr. Anstey makes an affidavit of no confidence in Hongkong special jurors.--He asks for a common jury. The affidavit.—The prayer refused.—A gross libel upon the special jurors.—The hearing of Mr. Anstey's case against Mr. Mitchell.—The evidence.—Mr. Anstey's extraordinary address upon Hongkong affairs and people generally.--The jury request the opinion of the Chief Justice upon the law of the case.--The Chief Justice rules that a mere suggestion by the Sheriff to prisoners to raise money for extra food supplied them from outside, not an attempt at extortion.--Verdict of not guilty received with applause.—A paltry, vindictive, and contemptible action.—Defeat well merited.—Public opinion.—The whole society of Hongkong convulsed in quarrels.—The Chief Justice takes the Bench at noon owing to bad health.—Mr. Anstey objects.--The jurymen approve as a protest to the Attorney-General's action.—Their letter.—Practice of keeping jurymen waiting when not in the box.—Manifestation of good-will to the Chief Justice.—Mr. Anstey and Lord Palmerston's fine revenge.—Local view of the Chief Justice at this stage and of Mr. Anstey.—Constitution of Legislative Council at this period.—Mr. Labouchere, Secretary of State, informs Sir John Bowring he has no objection to a moderate increase in the number of the Legislative Council.—Secretary of State's approval of Estimates being laid before Legislative Council.

Ch. XVI § I.

**Ordinance No. 1 of 1855, enforcing neutrality during contest in China.**

On the 15th January there was promulgated Ordinance No. 1 of 1855, to enforce neutrality during the contest then existing in China.

**Commission of inquiry as to fees received by Government officers.**

A Commission of Inquiry into the nature of fees received by officers of the Government assembled by order of Governor Bowring at the Government Offices on the 7th March for the first time, and on the 12th of that month, the Governor left for Siam to conclude a treaty of commerce with the King of that place, returning to Hongkong on the 12th May having met with complete success in his mission.

**Treaty of Commerce with Siam.**

**Return of Chief Justice Hulme from leave in indifferent health.**

Chief Justice Hulme returned to the Colony on the 2nd April, and at once re-assumed the duties of his office. He had not very much benefited by his year's absence as he could not obtain any further extension except at the sacrifice* of his salary, and having exhausted all the leave he was entitled to, he had to return to duty with a seriously-impaired constitution.

* See *antè* Chap. XV., p. 343.

On the 15th April Mr. Sterling, who had been acting for the Chief Justice, left on twelve months' leave of absence on sick leave. Mr. Bridges again acted for him.

**Departure of Mr. Sterling, Attorney-General, on leave.**

**Mr. Bridges acts.**

An investigation was held before the sitting Magistrate on the 5th May into a widely-extended system of extortion which had for some length of time been perpetrated by Chinese subordinates in different Government Offices, reminding one greatly of the scandal attached to a similar practice, but on a much larger scale and discovered also almost under similar circumstances in 1897, as related hereafter in this work.* Notwithstanding that the law forbade gambling,† it was known that there were several extensive gambling establishments in the Colony. The circumstances alluded to were discovered by the servant of one of the officers of the Police Court quarrelling with some of the coolies. The servant in revenge placed in his master's hands three cheque books, informing him at the same time that the office coolies were in the pay of the gambling-houses. These books the officer handed to Superintendent May, who had them examined by Mr. Caldwell. They were found to belong to a gambling-house in the lower bazaar, and their contents were curious and showed, *inter alia*, payments made to coolies at the Supreme Court and the Chief Magistrate's Court, and to the Police. Mr. Caldwell, thus put on the scent, went to the house indicated, where he found the keeper of the gambling-house, who admitted that the house was used for gambling purposes, and, on a box being opened, further confirmatory evidence was obtained. The man at once admitted that he had paid the moneys entered in the book, naming several of the parties who had received the sums. They were taken into custody; but when confronted before him in the Magistrate's Office, the keeper, as stoutly denied as he had formerly asserted, that they were the men to whom he had paid money. The gambling-house-keeper was fined, the establishment broken up, and four of the coolies, who it may here be noted "denied all knowledge or receipt of any money levied in their names," were committed to take their trial before the Supreme Court. At the Criminal Sessions, however, which was held on the 25th May, the acting Attorney-General, for reasons not now apparent, decided to file no information against the defendants, and they were accordingly discharged by Proclamation.

**Illicit gambling and extortion practised by subordinate officials in Government Offices.**

**Extensive gambling establishments in the Colony.**

**Payments to office coolies in the Supreme Court, Police Court, and Police Offices.**

**Confession of gambling-house keeper.**

**Confirmatory evidence.**

**Arrest of the offenders.**

**Keeper fined, establishment broken up, and coolies committed for trial.**

**Prosecution abandoned.**

Lieutenant-Colonel Hope Graham, of the 59th Regiment, having, on the departure of Colonel Griffin‡ on the 10th May, assumed the command of the Garrison, was appointed to a seat in the Executive Council on the 12th.

**Lieutenant-Colonel Hope Graham, a member of the Executive Council.**

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* See Vol. II., Chap. XCLI.
† See Ordinance No. 14 of 1844.
‡ See *antè* Chap. XIV. § II., p. 340.

Ch. XVI § I.

1855.

Crimean war.

Bishop of Victoria's proposal for a day of fast and humiliation.

Governor's refusal without instructions from Secretary of State.

Decision of Secretary of State that Proclamation of a Fast is reserved to the Sovereign by Order-in-Council.

The Bishop of Victoria submitted to the Governor, on the 25th May, a proposal for a public day of solemn fast and humiliation and prayer, for imploring the blessing and assistance of the Almighty in the war in which the nation was engaged, and for praying for the speedy restoration of peace. On the 28th, after consulting the Executive Council, the Governor informed the Bishop that, in default of communication from the Secretary of State, he did not feel warranted in complying with the Bishop's wish, the legal point in reference to which, after communicating with the Secretary of State, is to be found in the following extract from a despatch subsequently received and published on the 8th January, 1856:—

"I have to acknowledge your despatch No. 82 of the 14th June last, transmitting a correspondence which had taken place between yourself and the Bishop of Victoria, on the subject of the proclamation of a day of general fast and humiliation.

I approve of the conduct which you pursued in refusing, without instructions from Her Majesty's Government, to proclaim a public fast .....

The proclamation of a fast ..... is an act which, by law, is reserved to the Sovereign of this country as Head of the Church of England; ..... and as a fast for the members of the Church of England cannot be ordered except by the authority of the Queen-in-Council, no Governor of a Colony can properly exercise an authority which is not exercised by the Sovereign except by Order-in-Council."

Free pardons on Queen's Birthday.

Colonel Caine appointed senior member of the Legislative Council.

Secretary of State's directions as to communications concerning the Colony.

Colonel Caine as Lieutenant-Governor only authorized to act in absence of Governor.

His position almost a sinecure.

The Governor, on the occasion of the Queen's Birthday, granted a free pardon to five Europeans and eleven Chinese on condition that they left the Colony for good. The former included soldiers undergoing long terms for desertion and the rest for larceny and mutiny. The Chinese included Chun Cheong She, the widow of the boatman who was hanged on the 27th June, 1854, for the murder of Mr. Perkins.*

*The London Gazette* of the 7th June contained the announcement that Colonel Caine had been appointed the senior member of the Legislative Council, and on the 25th of the same month, a Notification appeared that, "in consequence of instructions from the Secretary of State, the Government Notification of the 15th April, 1854,† was withdrawn, and that all communications to Government in matters concerning the Colony were in future to be addressed to the Colonial Secretary for submission to His Excellency the Governor and Commander-in-Chief." Colonel Caine as Lieutenant-Governor was now therefore only authorized to act in the absence of the Governor, and his office became almost a sinecure.

The Legislative Council at this time consisted of five official and two unofficial members, the former being the Governor, the

* See *antè* Chap. XV., pp. 349, 350.
† See *antè* Chap. XIV. § II., p. 340.

Lieutenant-Governor, the Chief Justice, the Attorney-General, and the Chief Magistrate of Police. Why the Lieutenant-Governor, when the Governor was present in the Colony, should have had precedence over the Chief Justice cannot be understood, for, as is well known, in days of old Chief Justices ranked immediately after the Governor, and in many instances acted for him.

Ch. XVI § 1. 1855. Lieutenant-Governor with precedence over Chief Justice.

The June Criminal Sessions were noted for the capture and conviction of two Chinese named Chui Ah Sam, the elder, and Chui Ah Sam, the younger, for burglary, the two being the brother and nephew of the notorious Chui Apo, the murderer of Captain Da Costa and Lieutenant Dwyer.* These men were also known as pirates, and now received heavy sentences.

Conviction of the brothers Chui Ah Sam, pirates, brother and nephew of Chui Apo.

At this Sessions another Chinaman, named Lee Akung, was sentenced to death for murder, and executed on the 11th July.

Sentence of death on Lee Akung for murder. His execution.

On the 2nd July the Government notified, by direction of the Secretary of State, that knowledge of Chinese would in future be considered a good ground for promotion in the public service.

Government Notification that knowledge of Chinese ground for promotion in the service.

On the 3rd July Mr. Caldwell resigned his offices of Assistant Superintendent of Police† and General Interpreter.‡ Discontent at his position, especially in comparison with others, would appear to have been the immediate cause of his resignation, and probably the idea also was that the Government would be embarrassed at his resignation, for the local press, evidently inspired, had frequently touched upon the subject and hinted that the Government, without Mr. Caldwell at its heels, and who undoubtedly to all appearances was a valuable public servant, would soon find itself in an awkward position.§ The Government on the 5th July accepted Mr. Caldwell's resignation, expressing regret at the same time "at the termination of his connexion with the Government to which for many years past he had rendered so much important and valuable service."‖

Mr. Caldwell resigns offices of General Interpreter and Assistant Superintendent of Police.

Discontent at his position.

Inspired articles in the Press at probable result if he resigned.

Mr. Caldwell's resignation accepted.

Government expression of regret.

Sir John Bowring, on the 6th July, appointed Mr. Thomas Wade to the Chinese Secretaryship in the Superintendency of Trade in Hongkong,¶ and on the 1st August, Mr. Alexander Grand-Pré was appointed to the office of Assistant Superintendent of Police and General Interpreter in the room of Mr. Caldwell, resigned, being gazetted on the 9th. Mr. Grand-Pré was represented as an alien, and in other respects his appointment was unfavourably commented upon, and as a Police Commission had been sitting since the 1st August, this appointment was

Mr. Wade appointed Chinese Secretary to the Superintendent of

* See *antè* Chap. XII. § II., pp. 296-299, and references there given.
† See Chap. V. § II., p. 128.
‡ See Chap. XII. § I., p. 286.
§ On this subject, see *antè* Chap. XIII. § I., p. 327.
‖ See Chap. XVII. § I., *infrà*., where Mr. Caldwell rejoins the service.
¶ *Antè* Chap. XV., p. 350.

Ch. XVI § 1. suggested as one for inquiry, having regard to the qualifications for the office of the senior officers passed over.

1855.

Trade in Hongkong.

Mr. Grand-Pré appointed to replace Mr. Caldwell.

Mr. Grand-Pré an alien.

The Government in a dilemma for interpreters.

It was not very long, however, after Mr. Caldwell's resignation, that his absence as a Chinese interpreter was felt, and on the 24th August, Government, finding itself in a dilemma consequent upon "the absence on sick leave of the regular Chinese interpreter at the Chief Magistrate's office," advertized "for a qualified person to act in his stead for some months at $50 a month," "the ordinary hours of attendance" being stated to be "from 10 a.m. to 4 p.m."

Frequent robberies in the town.

The Chief Magistrate robbed.

Heavy robbery in the Gaol.

Robberies at this period were frequent in different parts of the town, and amongst them one had been committed on the Police-guarded premises of the Chief Police Magistrate. Now an important one was reported as having been committed in Victoria Gaol, in consequence of which the authorities were severely taken to task, strong suspicion in this case resting upon the European prison subordinates. The Gaol was under the sole charge of a turnkey named Whelan, and on the 20th August, Goodings, the Chief Gaoler, discovered the padlock of the store-room forced, and upwards of £90, partly belonging to prisoners, abstracted from a *camphor-wood box* wherein the property of prisoners was kept, there being no safe in the gaol.

European subordinates suspected.

Upwards of £90 abstracted.

Small pay allowed the Gaol subordinates.

The occasion was deemed appropriate, however, for noticing the small pay allowed the Gaol subordinates. The Chief Gaoler had $45 a month; his wife, acting matron, $5; McLaughlin, first turnkey, $24; and Whelan, the second turnkey, formerly a private in the 59th Regiment, $15. On these salaries all these people had to provide themselves; and it was a matter for surprise how Government imagined honesty could be maintained in men of Whelan's class especially, on the small modicum he received. Of the money lost a sum of £30 belonged to prisoners who were entitled to its return on the expiry of their sentences. The Sheriff, it appeared, had bought an iron chest for the gaoler's use some months before, but as the Government would not allow the disbursement, it lay in the robbed store-room unused. McLaughlin and Whelan were committed for trial for larceny on the 30th August, but the case being a weak one they were let out on bail, the prosecution being subsequently abandoned by the Attorney-General.

Turnkeys committed for trial.

Prosecution abandoned.

A discharged seaman sues the gaoler for moneys deposited by him.

A seaman named Clark, on the 7th September, sued Goodings, the Gaoler, for £18. 16*s*. 6*d*. moneys deposited by him in terms of Ordinance No. 1 of 1854, on the occasion of his being sent to gaol for refusing to do work on board ship. The defence

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was that the money had been stolen from the store-room in the Gaol, together with other moneys belonging to himself, the defendant, and to other prisoners. The case was dismissed, the Chief Justice holding that the Sheriff was the proper person to be sued. The Court at the same time informed the plaintiff that, unless he was prepared to prove gross negligence, the plaintiff must stand the loss himself. On the plaintiff remarking that he had lost everything he possessed in the world and for which he had worked hard, His Lordship replied "perhaps a memorial to the Governor might obtain compensation—he, the Chief Justice, was there to administer the law and could only suggest the application."

Ordinance No. 1 of 1854.

The Chief Justice decides Sheriff the proper person to be sued.

Chief Justice's suggestion of a memorial to the Governor.

A disturbance at a sale of Crown lands by auction at East Point on the 12th August, in connexion with which Messrs. Jardine, Matheson, & Co. had previously remonstrated with the Government, and which on the day of the auction had the effect of deterring certain Chinese from purchasing the land owing to certain threats which had been held out to them, induced the Government on the 19th September to issue a warning "that any person or persons causing interruption to or interference with any land sale, to the injury of Crown rights or the detriment of the public revenue, would be proceeded against according to law."

Disturbance at a public auction of Crown lands.

Messrs. Jardine, Matheson, & Co., and the threats held out to the Chinese.

Government issue a warning as to consequences of interfering with land sales.

The Act 18 and 19 Vict. c. 104, for the Regulation of Chinese Passenger Ships and giving powers to the Hongkong Legislature in reference thereto, was passed on the 14th August.

The Act 18 and 19 Vict. c. 104 for regulating Chinese Passenger Ships.

On the 4th October Government cancelled the Commission of the Peace hitherto existent, and on the 5th and 17th October and 26th November, notified the nomination of those appointed to the fresh list.

Fresh list of Justices of the Peace.

At this period the records show the ungracious and illegal act of the American Consul, Mr. Keenan, in rescuing a prisoner who was being taken to gaol on conviction by the Chief Magistrate. It appeared that the carpenter of the American ship *Reindeer*, an Englishman, had been put in irons after having been severely flogged by the master, C. W. Nichols. On his complaint, the case was heard on the 23rd October, and the Magistrate, Mr. Hillier, fined the master $50, with $25 compensation to the injured man, who was represented by Mr. Stace. Mr. Keenan was present at the hearing, and objected throughout to the jurisdiction of the Court, on account of the affair having happened on board an American ship. The master refused to pay the fine, and, as stated, on the way to the Gaol, through a trickery, he was rescued by the Consul from the Usher and taken on board the U. S. S. *Powhatan*.

The American Consul, Mr. Keenan, rescues a prisoner.

The facts.

Rescued by trickery and taken on board an American man-of-war.

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Mr. May goes on board.

No assistance given him.

Local acrimony against the Consul's behaviour.

This proceeding having been reported to the Chief Magistrate, out of respect to the American flag, Mr. May, the Superintendent of Police, went himself on board the *Powhatan* to demand that Captain Nichols should be given up. There was no active opposition shown to Mr. May, but no assistance was given him, and as the master had either left the ship or was well concealed on board, the Superintendent had to return without his prisoner. Meanwhile the *pros* and *cons* of the case were fully discussed locally, and much acrimony shown against the Consul's behaviour.

The Americans address a letter of approval to their Consul.

Arrest and committal for trial of the Consul.

On the 27th October, "the American citizens and masters of American ships in Hongkong and China waters cognizant of the occurrence of the 23rd October," addressed a letter of approval to their Consul. The authorities in the meantime decided to prosecute Mr. Keenan, and he was summoned to appear before the Police Magistrate on the 1st November. Failing to appear a warrant was issued for his apprehension, and after inquiry on the 13th November he was committed for trial before the Supreme Court, by the Assistant Magistrate, Mr. Mitchell, on a charge of misdemeanour in rescuing a prisoner, assault, and assault and battery, bail being taken for his appearance.

Charge abandoned on the advice of the acting Attorney-General.

The reason.

The fine imposed against Nichols had in the meantime been paid. As regards the charge against Mr. Keenan, it had eventually to be abandoned on the advice of the acting Attorney-General, Mr. Bridges, in consequence of Captain Nichols not having been legally in custody. The Chief Magistrate had neglected to grant a warrant for the alternative of imprisonment in default of payment of the fine, and the Usher had therefore no legal authority for taking the offender to prison, so that there could have been no rescue, which was the main charge against Mr. Keenan, though, of course, being a mere point of form, this did not affect the merits or demerits of the case.

Eccentricity of Mr. Keenan.

Case of the *Annie Bucknam*.

Mr. Mitchell and his refusal to extend to Mr. Keenan the customary courtesy of offering

In connexion with Mr. Keenan, it may be mentioned that this was by no means the first time he had shown his eccentric conduct at the Police Court. In July last, a seaman of the American ship *Annie Bucknam* charged the mate of the ship with assault. Consul Keenan retained Mr. Cooper Turner to defend the mate, and with the latter appeared before Mr. Mitchell when the case was tried. Mr. Mitchell taking no notice of the Consul's presence, Mr. Turner reminded him that it was only customary courtesy to offer a Consul, representing the nation to which parties belonged, a seat on the Bench. Mr. Mitchell replied that Consul Keenan had on a former occasion treated the Court with marked disrespect, and he should not

think of acceding to Mr. Turner's suggestion. Upon this Mr. Keenan entered his protest to the Magistrate's jurisdiction, and left the Court. In the result the defendant was fined and ordered to be sent on board his ship as a deserter, and where he, no doubt, met with his 'deserts.'

Foreign Consul a seat on the Bench.

Proclamation of Sir John Bowring to the Chinese regarding seditious movement against Empire of China.

The subjoined translation of a proclamation issued to the Chinese community of Hongkong by the Governor, Sir John Bowring, relative to meetings held in the Colony by persons engaged in planning a seditious movement against the Empire of China, was published on the 24th October for general information. The government of the Colony, *by the laws of England*,* it will be seen, is made prominent :—

Hongkong and the laws of England.

"Whereas the island of Hongkong is a part of the Dominions of Great Britain, and governed by its laws : as the people of every nation whatsoever thereto resorting, either to reside or to trade, are entitled to the protection of the British Government, so is no one of them, no matter to what nation belonging, exempt from punishment of its laws if he venture to break them.

Information has been received that meetings have, of late, been secretly held in the Colony by persons engaged in planning a seditious movement against the Empire of China. Are they not aware that such proceedings are utterly forbidden by the laws of this Government, and that they expose both principals and accessaries to very severe penalties ?

It being deemed right to make public without loss of time the prohibitions of the law affecting this offence, Notice is hereby given to all the inhabitants of the Colony, that any person, whether Chinese or of any other nation, detected in making, planning, or arranging an attack of a war-like character upon any person in any part of China, will be proceeded against with the utmost rigour of the law.

Such of you, the Chinese population, as continue to pursue your avocations in peace, will have the benefit of protection as heretofore ; but those who, ungrateful for that protection, presume to make use of this Colony as a place in which they may assemble to contrive sedition, shall be handed over, the moment they are discovered, to the Chinese authorities to be dealt with. The warning given, it will be followed by the execution of the law. Let every one attend and obey !

By Order,

W. T. Mercer,
*Colonial Secretary.*"

Colonial Secretary's Office, Victoria,
Hongkong, 24th October, 1855.

Mr. Sterling appointed Puisne Judge at Ceylon.

His career in Hongkong.

Local opinion.

The news of the appointment of Mr. Sterling, the Attorney-General, to a Puisne Judgeship in Ceylon, reached Hongkong at the end of October without much regret. From the records he does not appear to have been over-popular nor "generally esteemed for forensic powers," and both "the learned gentleman and the community were congratulated on his removal to a new and richer field of inaction, and as for the Ceylon folks, in the words of Burns—'We wish them luck o' the prize man.'"

* See Introduction, *antè* pp. 23, 24.

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The salary of Mr. Sterling's new appointment was £1,860 a year, while in Hongkong he drew £1,500, with the privilege of private practice. Mr. Sterling had served the Colony eleven years from the time of his arrival in July, 1844.*

**Continued illness of the Chief Justice.**

**Block in business.**

**Governor appoints a Commission to hold the Criminal Sessions.**

The Chief Justice being too unwell to hold the Criminal Sessions, and the two postponements that had taken place in consequence having been exhausted, the Governor, on the 26th October, appointed a Commission consisting of "The Honourable William Thomas Bridges, Esquire, acting Attorney-General, as President; the Honourable William Thomas Mercer, Esquire, Colonial Secretary, and the Honourable Lieutenant-Colonel Henry Hope Graham, Commanding the Forces, as members, to discharge the office of Chief Justice at the next ensuing Criminal Sessions, and no longer; and His Excellency was further pleased to appoint under Ordinance No. 6 of 1846, Henry Kingsmill, Esquire, barrister-at-law, to discharge the duties of Attorney-General at the Sessions aforesaid." The Sessions was accordingly held on the 29th, 30th, and 31st October. There were thirteen cases for trial comprising prisoners who, but for the appointment of the Commission, must have remained in Gaol for a considerably longer period.

**Ordinance No. 6 of 1846.**

**Mr. Kingsmill appointed to discharge duties of Attorney-General at the Sessions.**

**November Criminal Sessions postponed.**

**Governor appoints the same Commission.**

Sir John Bowring was of opinion that it was quite impossible to postpone the Sessions, public feeling being, moreover, against such a course. The event showed that the Governor was right, for, in consequence of the continued indisposition of the Chief Justice, the November Criminal Sessions, fixed for the 29th of that month, had to be postponed to the 29th December following, when the Governor again appointed the same Commission as before, with Mr. Kingsmill as acting Attorney-General, to dispose of the criminal work. It may be added that, during the whole of the period mentioned above, there had been a complete stagnation of the work on the civil side of the Court, and the Government now appointed Mr. Day, a local practitioner, to hold a Court of Summary Jurisdiction on the 4th January to dispose of arrears, as the acting Attorney-General, Mr. Bridges, could not sit, in consequence of his holding retainers in one or more of the cases to be tried.

**Complete stagnation of the Court work on the civil side.**

**Mr. Day appointed to hold a Court of Summary Jurisdiction.**

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* See *antè* Chap. II., p. 56.—"The late Paul Ivy Sterling, Esq., formerly a judge of the Supreme Court of Ceylon, who died at Southsea, Hampshire, on the 23rd August, in the seventy-fifth year of his age, was the eldest son of the late Reverend Joseph Sterling, of Queen's County, Ireland, and was born in the year 1804. He was educated at Trinity College, Dublin, and subsequently entered as a student at King's Inn, Dublin. He was called to the Irish Bar in Michaelmas Term, 1829, and afterwards proceeded to Gray's Inn, London. He was appointed Attorney-General in China in 1843, and a Puisne Judge of the Supreme Court of Ceylon in 1855. That office he filled till 1863, when he retired on a pension."—*The Law Times*, 20th September, 1879, p. 364. His wife had predeceased him on the 30th August, 1866, at Lower Brunswick-place, Brighton.

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Important legislative measures in 1855.

The year 1855 saw some important measures pass the Legislature, the most important ones as bearing upon the Courts being Ordinance No. 2 relating to foreign attachments; No. 5 providing for the disposal of unclaimed balances of the estates of persons dying intestate; and No. 6 amending the practice and procedure of the Supreme Court, and adopting certain provisions of the Common Law Procedure Acts, 1852 and 1854—(15 & 16 Vict. c. 76 and 17 & 18 Vict. c. 125).

Ordinance No. 2 of 1855.

Ordinance No. 5 of 1855.

Ordinance No. 6 of 1855.

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Continued illness of Chief Justice Hulme.

Mr. Day appointed to sit in his place.

Ordinance No. 6 of 1845, section 5.

On the 2nd January the Government notified that "in consequence of the continued indisposition of the Honourable the Chief Justice, the Governor had, under his hand and the seal of the Colony and in accordance with section 5 of Ordinance No. 6 of 1845, appointed Mr. John Day, barrister-at-law, to sit in the place of the Chief Justice, and hear and determine such suits as may be brought before him under the Summary Jurisdiction of the Supreme Court, on Friday, the 4th January, and following days until all such cases shall have been adjudicated and determined." It was well that so simple a remedy could be applied to what had been a growing grievance and to which attention had been repeatedly called.

Continued disturbances in China.

Ordinance No. 1 of 1856.

Ordinance No. 1 of 1855.

On the same day, owing to the continuance of disturbances in China, Ordinance No. 1 of 1856, re-enacting Ordinance No. 1 of 1855 enforcing neutrality during the contest, was promulgated.

Appointment of Mr. T. C. Anstey as Attorney-General in the place of Mr. Sterling.

His previous career.

The news of the appointment of Mr. Thomas Chisholm Anstey to the Attorney-Generalship of the Colony, in the place of Mr. Sterling, reached Hongkong at this time. He was a barrister of seventeen years' standing, and as a member of Parliament had distinguished himself by hostility to Lord Palmerston as Foreign Secretary, and at the time of his appointment to Hongkong held the appointment of a Law Commissioner under His Lordship's administration. The following are biographical notices in regard to Mr. Anstey at the time of his appointment, and, as he played such an important part in the affairs of Hongkong, for purposes of record, they will not be found out of place. The first notice is as follows:—

Biographical notices.

Anstey, Thomas Chisholm, [Youghal].

"Second son of Thomas Anstey, Esquire, of Anstey-Barton, Van Diemen's Land. Born in London, 1816; married 1839, Harriet, 2nd daughter of the late J. E. Strickland, Esquire, of Loughglyn House, co. Roscommon. Educated at Wellington, Somersetshire, and at University College, London. Called to the Bar at the Middle Temple, in Hilary Term, 1839. Is Professor of Law and Jurisprudence at the Colleges of St. Peter and St. Paul, Bath. Is author of "British Catholics and the New Parliament" [1841]; "A Guide to the Laws of England affecting Roman Catholics";* "A letter to Lord Cottenham on Petitions of Right";† "A letter to W. H. Watson, Esquire, M.P.,

* For review, see 6 Jur. Part 2 (O. S.) p. 250.
† See 10 Jur. Part 2 (O. S.) p. 1.

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on illegal Fees on Petitions of Right"; "Guide to the History of the Laws and Constitution of England, in Six Lectures"; together with numerous miscellaneous papers in the "Portfolio," "Dublin Review," "Law Magazine," etc. A liberal; opposed to "centralization;" in favour of the repeal of the Union both with Ireland and Scotland; thinks "that the abolition of excise, the reduction of customs, and the repeal of all currency laws, are the only methods of insuring protection to all." First returned for Youghal in 1847."

The following is from *Parliamentary Portraits*:—

## Mr. THOMAS CHISHOLM ANSTEY.

Mr. Anstey sits for the borough of Youghal, for which he was first returned in 1847. He is the second son of a highly respectable landed proprietor in Van Diemen's Land, a member of Council there, and was born in 1816. His family is Protestant; but he himself coming over to England to be educated was, when young, converted to Catholicity. He was educated at Wellington, in Somersetshire; and at University College, London.

Mr. Anstey adopted the profession of the law, and, while a student, was distinguished as an active and ardent member of the legal debating societies. He was called to the Bar by the Society of the Middle Temple, the 25th January, 1839. He married soon after a Miss Strickland, an Irish Catholic lady of good family, and went to carry on his profession in Van Diemen's Land. There he was made Judge of the Insolvent Court, but, getting into some disagreement with the authorities of the place, he threw up his appointment and returned to England. He then joined the Northern Circuit, and was an attendant for some time at the Manchester Sessions. He afterwards more exclusively devoted himself to Chancery practice, and he has been employed in that department with advantage in some very important cases. He is the author of many articles in the periodicals, and of a very able treatise on the laws affecting Roman Catholics. As a writer, Mr. Anstey is correct, powerful, and fluent. His learning, too, is profound and extensive. His election for Youghal, and his subsequent parliamentary notoriety, are of too recent date to need record here.

He is a man of energetic and ardent mind; but he is, at the same time, perfectly upright and honest. During his whole life, he has never allowed his interests to interfere with his chivalrous and almost Quixotic integrity.

Mr. Anstey is a liberal in politics and favours the repeal of the Union both with Ireland and Scotland. He took part in the debate of Tuesday night, on the motion of Sir George Grey, for the continuance of the suspension of the Habeas Corpus Act in Ireland, when Mr. Anstey addressed the House against both the motion and the amendment. He admitted the reality of the insurrection of last year, which was put down, and of the existing disaffection in Ireland; yet he considered the grounds put forward in support of the measure utterly insufficient to justify an invasion of the personal liberty of the subject. For the same reasons, he maintained, a committee of inquiry would be fruitless. On the same evening, the honourable member moved for leave to bring in a bill for the further repeal of enactments imposing penalties upon Roman Catholics, this being substantially the same Bill as he introduced last session. He was pressed to withdraw the measure as ill-timed; and, on declining to do so, the House divided, and the Bill was rejected by a majority of 2."

**Mr. Anstey as a Law Commissioner.**

In addition Mr. Anstey was a Law Commissioner, and *The Law Magazine* had occasion to express regret at his severance from the Commission, owing to "his great acquaintance with

the Statute Law and power of laborious exertion equalled by few," and especially as Mr. Lonsdale, the Secretary to the late Criminal Law Commission, and Mr. Rogers, one of the Assistant Commissioners of the late Statute Law Commission, had also been suffered to quit this service, the former to attend to his duty as County Court Judge and the latter to go to the Colony of Van Diemen's Land as Solicitor-General,—all of whom it would be difficult to replace.*

*The Liverpool Albion* on Mr. Anstey's appointment

The London correspondent of *The Liverpool Albion* in one of his letters headed "Metropolitan Gossip," dated London, the 19th January, 1856. made allusion to Mr. Anstey's appointment, the concluding portion of which, as will be seen hereafter, proved rather an unfortunate prophecy, as events showed :—

He goes to China in a "diabolic frame of mind."

"How the *Post* happens to be Pam's own print is unintelligible to all and their name is legion who reject the Urquhartine story about a former editor having called for P's head as a traitor, and then being muzzled with a St. Petersburg consulship, just as in the present case of Anstey, who is made Attorney-General at Hongkong, for the same reason by the same person. Chisholm, by the way, has gone to the Celestials *in a diabolic frame of mind*."

Local hopes.

Locally it was hoped that on his arrival Mr. Anstey would forget that he was once a reformer. A man of his ability and energy might be of essential benefit to the Colony.

A system of gaol delivery.

Escape of convicts.

A system of gaol delivery had now been going on for some time, and of a kind that must have been considered more objectionable than the late Criminal Sessions Commissions,† eight convicts having escaped over the gaol wall by means of a rope, and ten from the guard while at work on the roads. Of the eighteen only five were re-captured.

Mr. Bridges, acting Attorney-General, leaves for England without waiting for Mr. Anstey.

He anticipates Chief Justice's early retirement.

Mr. Bridges, the acting Attorney-General left for England on the 15th January, without waiting to welcome his successor who was shortly expected. For nearly a year, he had filled the office of Attorney-General during the absence of Mr. Sterling,‡ for whom he had also acted when he officiated as Chief Justice during Mr. Hulme's stay at Home.§ Contemplating the early retirement from the Bench of the Chief Justice, consequent on His Lordship's continued indisposition, Mr. Bridges, it would appear, went Home to urge his claims should Mr. Anstey be raised to the Bench.

Dinner given to him.

A dinner was given to him on the 12th January by both branches of the legal profession.

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* On this subject, see also *The Jurist*, (O. S.) Vol. 17 and 18, Pt. 2, 1st July, 1854, p. 226.

† See *antè* pp. 366, 367.

‡ See *antè* Chap. XIII. § I., p. 322.

§ See *antè* Chap. XV., p. 347.

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No Criminal Sessions held in January.

The last published *Government Gazette* contained an intimation from the Registrar of the Court that no Criminal Sessions would be held this month (January) probably in anticipation of the arrival of the new Attorney-General, who was expected about the time they should have been held.

The long tale of Police and Prison misgovernment.

Coroner's inquest.

The long tale of Police and Prison misgovernment again came under public notice consequent upon the verdict of a Coroner's Jury at an inquest recently held. Speaking of the cells under the Police Station, Dr. Dempster, the Colonial Surgeon, in his evidence at the inquest, said :—

Cells under Police Station 'a *sink* of iniquity.'

"It is a filthy, disgusting place, badly ventilated, and altogether unfit for occupation by human being. I was never in the cells but once to see a Policeman under *delirium tremens*; and so horrified was I with the dirty, stinking hole, that I took it on myself to order the man out of confinement at once. It is a *sink* of iniquity. A man in a weak state of health kept in such a place twenty-four hours would receive irremediable injury to his whole system."

Verdict of the Jury.

According to the evidence, the deceased had been kept in one of these cells for four nights and three days! And the following verdict of the Jury was no less startling :—

"The deceased died from the effects of disease contracted prior to his arrest —death being accelerated by severe treatment at the hands of the Police, not only in his being dragged from his bed at midnight, when so sick he could hardly walk, but in being thrown into a cell described by the Colonial Surgeon as unfit for occupation by any human being, and further accelerated by the want of attention apparent during confinement in Gaol; and the Jury recommend that the Colonial Surgeon's representation regarding the cells at the Police Station be brought to the especial notice of His Excellency the Governor."

Arrival of Mr. Anstey.

Mr. Thomas Chisholm Anstey, the new Attorney-General and standing counsel to Her Majesty's Plenipotentiary and Superintendent of Trade, whose fame and reputation had so long before preceded him, arrived in Hongkong by the P. & O. Steamer *Cadiz* on the 30th January. It appeared that in the month of October, 1855, upon the recommendation of Sir William Molesworth, the Secretary of State for the Colonies, Her Majesty had been pleased to appoint him Her Attorney-General for Hongkong.*

Date of his departure from London.

On the 21st November, 1855, Mr. Anstey left London by overland route for his destination, and arrived in Hongkong on the date mentioned above.

Governor appoints him to sit

His appointment was gazetted the same day, and in a separate notification it was also announced that the Governor had ap-

* *Parliamentary Papers on Hongkong*, 1860, p. 421, §§ 1, 2. *See also* Mr. Anstey's allusion to Sir William Molesworth and the circumstances of his appointment in his speech in the case against him by Mr. Mitchell, in August, 1856, Chap. XVII. § I., *infrà*.

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pointed him (in consequence of the continued indisposition of the Chief Justice, and in lieu of Mr. Day previously gazetted for the purpose and who had until this been sitting) to hear and determine suits on the summary jurisdiction side of the Court, on the 1st February and following days until all such cases had been adjudicated and determined. This appointment was virtually the same as that previously conferred upon Mr. Day under section 5 of Ordinance No. 6 of 1845.*

for Chief Justice in lieu of Mr. Day.

Ordinance No. 6 of 1845. section 5.

On the 31st January, Mr. Anstey was gazetted to a seat in the Legislative Council. During this month the Bills of Lading Ordinance (No. 2 of 1856) and another extending certain Imperial Acts to this Colony (Ordinance No. 3 of 1856) passed the Legislature.†

Mr. Anstey gazetted to a seat in the Legislative Council.

Ordinances Nos. 2 and 3 of 1856.

On the 1st February, the new Attorney-General, Mr. Anstey, officiated for Chief Justice Hulme on the summary jurisdiction side of the Court as previously announced. Mr. Anstey's want of knowledge of the Chinese character caused some of the cases apparently to occupy more time than their importance deserved. In one case, for a breach of contract, the plaintiff and his witness were evidently guilty of perjury, and fined respectively $100 and $20, they having, according to Mr. Anstey's decision, "out of their own mouths, after a most careful and searching cross-examination on the part of the Court, convicted themselves of wilful perjury." The fines were paid.

Mr. Anstey officiates for the Chief Justice on the Summary side.

His want of knowledge of the Chinese character.

He fines a plaintiff and his witness for perjury.

The loss sustained by Mr. Caldwell's resignation‡ was made apparent at this sitting, when he, happening to be present in Court as a spectator or witness, was called in to the assistance of the acting Interpreter.

Mr. Caldwell's loss as an interpreter.

The Hongkong Bar had been, until very lately, formed of such a small number of barristers that it was little more than sufficient to entitle it to be called a body. The Bar had, since the commencement of the Supreme Court until quite recently, consisted of rarely more than two barristers and oftener of only one. Under such circumstances it was not to be wondered at that the rules of the Bar may have been occasionally infringed. Now that there were several practising barristers in the Colony, it was only fair, it is to be presumed, that strict professional rules of etiquette should have been adopted, and the following was the document drawn up by the Attorney-General on the

Rules of the Bar occasionally infringed.

Rules of etiquette drawn up by Mr. Anstey.

* See *antè* p. 367.

† The following is the schedule of the three Acts of Parliament to which the Ordinance referred:—

6 & 7 Vict., Cap. 83.—"An Act to amend the Law respecting the Duties of Coroners."

9 & 10 Vict., Cap. 24.—"An Act for removing some Defects in the Administration of Criminal Justice."

11 & 12 Vict., Cap. 46.—"An Act for the Removal of Defects in the Administration of Criminal Justice."

‡ See *antè* p. 361.

Ch. XVI § II. rules to be observed by barristers in future. It was accompanied by the following circular :—

1856. The circular and memorandum.

CIRCULAR.

"The Attorney-General has the honour to make known to the members of the legal profession in this Colony his reply of this date to certain questions, recently submitted to him on the part of the Colonial Bar, in a matter highly affecting the conduct and character of its members."

Attorney-General's Office,
Hongkong, 23rd February, 1856.

The following was the memorandum :—

MEMORANDUM.

"The Attorney-General has the honour to acknowledge a communication under this date from two English barristers practising at the Bar of this Colony ; in which, after expressing their belief that the manner, in which the rules and usages of the English Bar are disregarded here, has not escaped the Attorney-General's attention, those gentlemen request him, as Leader of the Provincial Bar, to certify his opinion how far those 'points of departure are consistent with the honour and dignity of the Bar itself.'

In acceding, as he is bound to do, to their request, the Attorney-General will endeavour to specify the several 'points of departure,' which have as yet caught his observation. It is possible that there may be others of the same kind. If so, the gentlemen of the Bar will be pleased to consider them to be comprehended within the general reprehension which it is his duty to express of *all* endeavours on the part of English barristers, to set at nought their honourable obligations ; which follow them, in that character, wheresoever they go ; and to the universal observance of which by its members is alone to be attributed the high pre-eminence which still, after so many centuries of possession, remains to that Bar undiminished and untarnished.

But the province of a colonial Attorney-General, as Leader of a local Bar, is in this matter limited. *He* has no power to alter the code of honour in favour of himself or his brethren. *He* has no power, on the other hand, to enforce their obedience to its precepts. All that he *may* do is to explain and declare them when occasion calls for it ; and to remind his brethren, if need be, that there *is* one tribunal which has jurisdiction, although he has none,—their Inn of Court.

The Attorney-General has now to express his concern in approaching the points to which his attention is called, that any doubt could have been felt in any quarter with respect to their character ; and, above all, that any persuasions or pretences, commended by whatsoever authority, should have succeeded in procuring them to be adopted in practice. These 'points of departure' are in truth so utterly at issue with the principles of the English Bar, and the practice of barristers, that a deviation into them would undoubtedly be punished in England with the forfeiture of his grade by the offender.

1. Barristers *are* disqualified from entering into any agreement or understanding with solicitors, directly or indirectly, having in view the dispensation of professional employment to the former by the latter.

2. Except when the client happens to be also a barrister, no barrister *can* stipulate with a solicitor for the employment of another barrister, albeit not himself party or privy to the agreement.

3. For the barrister to nominate the solicitor in the cause *is* grossly unprofessional. No barrister can interfere with the client's own selection of an adviser. Much more therefore is to be condemned the practice, which is said to have been recently introduced here, for the barrister to stipulate as a condition of his own acceptance of the client's retainer, that the latter shall appoint in lieu of his own ordinary attorney, to act for him in that matter, one nominated by the barrister, or one with whom the barrister signifies his desire to act.

4. No gentleman of the Bar, whether upon pretence of being a general referee or any other pretence, *can* intermeddle with the conduct of business in a solicitor's office. The division of the profession into these two walks is for the client a costly one at the best; and it loses all the advantage for which it was established, if combinations like these are tolerated, and the reciprocal control suffered to become a nullity.

5. In any case of immediate and pressing emergency, no doubt, a client unprovided with an attorney, or otherwise *consilii inops*, *may* consult personally a barrister, or employ him to draw a deed or will, or even hand him a brief. But these three are the *sole* exceptions—and *they can very rarely occur in practice*,—to the common and otherwise inexorable rule which denies to the barrister all professional intercourse with any client except through the medium of that client's attorney.*

6. No personal preferences—however well grounded—*can* entitle any client or solicitor to insist upon a barrister's waiving in favour of his junior his right and duty of leading that junior in a cause when both are retained on the same side;—neither *can* the barrister waive his seniority in such a case, whether the waiver be voluntary or not.

So far as respects himself personally, the Attorney-General wishes to add that he holds himself quite as much bounden, in Hongkong as in England, by the code of honour, to which he submitted himself when he was received into the great confraternity of the English Bar; and that he is resolved, not even by his silence, to sanction the deplorable abuses and laxities of discipline, which have led to his being consulted in the present instance.

(Signed) T. CHISHOLM ANSTEY.

Attorney-General's Office, Hongkong,
23rd February, 1856.

The view taken of the memorandum.

This memorandum was not well received in certain quarters and therefore unfavourably commented upon. The two barristers who addressed the Attorney-General were believed to have been Mr. Day and Mr. Green; the one to whom the laxities of practice were attributed was Mr. Bridges, upon whom the memorandum was looked upon as an attack; and the fourth, who did not join in the remonstrance, was Mr. Kingsmill, in whose favour Mr. Bridges solicited the support of his clients during his absence. Anything like a partnership between barrister and attorney or undue influence exercised by the one over the other, or colluding between them, cannot be too forcibly reprehended, and as some such practices were alleged to have grown up, it was with some satisfaction that it was learnt that Mr. Anstey's attention had been directed to their repression. Up to 1851, there was no practising barrister in Hongkong, except the Attorney-General. In that year Mr. Bridges arrived,† and, having speedily acquired some insight into local matters and local law, had the field entirely to himself and that literally so while acting Attorney-General, during the absence of the Chief Justice. The circumstances rendered some laxity of practice almost inevitable, but no circumstances excused such

* See per Ld. Campbell in *Doe d Bennett* v. *Hale and Davis*, 14 Jur. 831.
† See *antè* Chap. VII. § II., p. 301.

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abuses as were indicated in Mr. Anstey's memorandum. With regard to the fifth article, it was explained afterwards that it was not intended to exclude clients from consulting with their barristers, but that, in all ordinary cases, there must be an attorney to retain the barrister and submit the case to him. At all events it seems strange that those who disagreed with the memorandum did not submit it to the Chief Justice, who apparently had not been consulted, and obtain his opinion upon it.

The Chief Justice not consulted.

The authority of barristers to appear in Consular Courts.

The authority of barristers to appear in Consular Courts, a matter mooted in the Supreme Court as far back as March, 1853,* some considerable time afterwards assumed a practical form by Messrs. Bridges, Kingsmill, and Green addressing a memorial to the Earl of Clarendon praying to be permitted to practise in the Consular Courts. It may be added that the right became a matter of question on the occasion of an action against Messrs. D. Sassoon, Sons, & Co., on a returned bill, on which occasion Mr. Alcock, the Consul, refused to allow a barrister to appear for the defendant although he could not speak English.

Messrs. Bridges, Kingsmill, and Green memorialize the Earl of Clarendon.

Sir John Bowring suggests matter be referred Home and the question of the right meanwhile suspended.

Her Majesty's Plenipotentiary had previously suggested to the Chief Justice, in order to avoid any collision by action, that the question of the right of barristers to plead in Consular Courts might be referred to the Home authorities, to which the Chief Justice assented. Pending the application, Sir John Bowring further suggested that the claims of the barristers might be suspended. This the Chief Justice refused, and gave an order that counsel should be heard while the matter was under reference at Home, although at the same time Mr. Hulme offered to suspend the right claimed for the lawyers, upon an order from the Plenipotentiary, which that functionary, however, declined to issue. As may be seen, therefore, the right of counsel to appear in the Consular Courts had ever been stoutly resisted both by Superintendents of Trade and Consuls, and although the Chief Justice had determined otherwise, that did not satisfy the Diplomatic Department when, as stated previously, the practitioners above mentioned decided upon memorializing the Foreign Office. The following favourable reply was received some months afterwards:—

The Chief Justice's decision and offer.

The right recognized by the Foreign Office.

Foreign Office, January 9, 1856.

Gentlemen,—I am directed by the Earl of Clarendon to acknowledge the receipt of your memorial, urging your claim as barristers practising at the Hongkong Bar, to be admitted to practise in the Consular Courts, and I am to state to you in reply that Sir John Bowring has been informed that Her Majesty's Government have assented to your application.—I am,' &c., &c.,

E. HAMMOND.

To Messrs. BRIDGES, KINGSMILL, and GREEN.

* See *antè* Chap. XIV. § I., p. 332.

The whole question of the admission of barristers and attorneys in Consular Courts arose from egregious blunders committed by two talented Consuls at Canton.* If the more able Consuls could err, a great deal more might be expected from the others, and the authority now granted was not unfavourably commented upon, seeing especially how seldom the services of counsel would be required in the Consular Courts. Singularly enough, the first employment the local Bar had in Canton was at the American Consulate, the American Consul having permitted two barristers† to appear in the case of Russell, Sturgis, & Co., and Nye, Brothers, & Co. This was mentioned as a singular instance of liberality, but it may be mentioned that the same privilege was afterwards extended to the American Bar by Chief Justice Sir Edmund Hornby when opening the new Court in Shanghai in September, 1865.‡

The egregious blunder in refusing the right.

Privileges extended to the English and American Bar by each other's Consulates.

This was also believed to be the first time that an English Crown lawyer had been permitted to appear in an American Court of Justice since the Declaration of Independence in 1776. Mr. Anstey, however, was only an English Crown lawyer within the bounds of the Colony of Hongkong, and therefore merely appeared as a simple barrister, nor was it a new thing for English lawyers to practise in American Courts of Justice, as Mr. G. Cooper Turner, the solicitor with Mr. Anstey, was on the rolls of the Court in California.§

First time an English Crown lawyer permitted to appear in an American Court of Justice since Declaration of Independence.

The Chief Justice was so far recovered as to be able to preside at the Criminal Sessions which commenced on the 28th February and concluded on the 3rd March. Twelve o'clock being the hour fixed for the opening of the Court, a considerable number of the community came to welcome the return of Mr. Hulme to the Bench after his long illness, but His Lordship did not appear for upwards of an hour after the appointed time; this happened on the first two days of the Sessions, and many went away before the business commenced. This was not the fault of the Chief Justice, however, for he was waiting in his Chambers until advised that interpreters had been provided, which was not done till ten minutes past one o'clock. Mr. Anstey appeared for the first time as Attorney-General. The local opinions of the time agree that he conducted the prosecution with much ability and with more fairness and leniency towards the prisoners than they had been accustomed to, but in one instance he was considered far from lenient when he succeeded in urging

Recovery of the Chief Justice.

He presides at the February Sessions.

The community welcome his return to the Bench.

No Chinese Interpreter present until late in the afternoon.

Mr. Anstey's first appearance as Attorney-General.

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* As to Mr. Elmslie, see *antè* Chap. XIV. §I., p. 332.

† Mr. Kingsmill, counsel, with Mr. Henry J. Tarrant, solicitor, for plaintiffs; the Honourable Mr. Anstey, Attorney-General of Hongkong, counsel for defendants' trustees and creditors, with Mr. G. Cooper Turner as solicitor.

‡ See Vol. II., Chap. XLII.

§ See *antè* Chap. XV., p. 350.

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the Court to commit two Chinese witnesses for perjury. The calendar was a heavy one, both as regards the number and nature of the crimes committed, in one case eight men and in another two being sentenced to death. The first case was that of Tsung Achew and seven other Chinese for murder and burglary at a silversmith's shop on the night of the 1st January at East Point when a gang of armed burglars attacked the premises, killing one sepoy and wounding another, both in the employ of Messrs. Jardine, Matheson, & Co., and who had gone to the assistance of the inmates of the shop. The eighth prisoner was discharged from the dock, not having been identified, and the jury returned a verdict of guilty against the remaining seven, recommending one of them to mercy and against whom sentence of death was recorded, the others being sentenced to death. Grave doubts having been raised afterwards as to the guilt of some of the prisoners, a searching investigation took place on the 22nd March, and on the 26th a proclamation appeared commuting the sentence of death against six to transportation for life and granting a free pardon to the seventh. This robbery, taken in connexion with another as serious, seemed to have alarmed the authorities somewhat, for a considerable increase to the Police Force was immediately ordered. In the other case, the two men sentenced to death for murder, Shun Ah Muen and Lee Ah Foo, were executed within the precincts of the Magistracy compound on the morning of the 29th March.

Two Chinese witnesses committed for perjury.

Heavy calendar.

Large number sentenced to death.

Doubts as to guilt of some.

Commutation of sentences.

Increase of Police Force.

Execution of Shun Ah Muen and Lee Ah Foo.

A tremendous fire broke out in the business portion of the town on the 23rd February, eighty houses, of the estimated value of $100,000, being destroyed, and seven men losing their lives. The conduct of the Police during the fire was deplorable, the iniquities brought to light justifying the conviction that no Police at all would have been preferable to the existing Force. The Chinese complained bitterly of the thefts by the Indian Police—contents of tills being removed while occupants were engaged removing the contents of their shops. Nor was the spoliation confined to the Indian part of the Force—the European and American element in it also coming in for public criticism.

Disgraceful conduct of the Police at an extensive fire in the town.

Thefts by Indian Police.

Spoliation by European and American element in the Force.

On the 4th March Mr. Anstey was gazetted a Justice of the Peace, and on the 5th an important Ordinance, dealing with Chinese Wills (No. 4 of 1856), was passed by the Legislature, and soon after, through the exertions of the Attorney-General, three new important enactments became law; these were Ordinances Nos. 5, 6, and 7 of 1856, relating to Common Law, Criminal, and Chancery Procedure, all passed on the 17th March, 1856.

Mr. Anstey gazetted a Justice of the Peace.

Ordinances Nos. 5, 6, and 7 of 1856.

1856.

A question having arisen as to the law by which contracts entered into with Her Majesty's subjects on Chinese territory by Chinese subjects for the cession of property in China should be regulated, and Mr. Bridges, when acting Attorney-General, having advised "that the Chinese were to be considered as beyond the pale of civilized nations, and that therefore such contracts were to be regulated by the law of England," the matter was referred to the Home Government, and by Lord Clarendon to the law officers of the Crown, namely, Sir A. J. E. Cockburn, Attorney-General, and Sir Richard Bethell, Solicitor-General. Their opinion was as follows:—

**Law relating to contracts with British subjects on Chinese territory by Chinese subjects for cession of property in China.**

**Opinion of Mr. Bridges that the Chinese are beyond the pale of civilized nations repudiated by Home Government.**

"We are of opinion that British Tribunals and Judicial Authorities in China are bound to observe the rules and principles of Public or International Law, as they are settled and received by the common consent of European nations.

We do not concur in the conclusion of the acting Attorney-General, that the Chinese are to be considered as beyond the pale of civilized nations.

In all questions that may come before any British Tribunal in China relating to the ownership or occupation of houses or lands, *lying within the dominions of the Emperor of China*, the law and custom of China, if they can be ascertained, must govern the decision, unless by the terms of the contract the law or usage of some other country be imported into it; and if in any such case the Chinese Law cannot be ascertained, the decision must be governed by the principles of natural justice. There is no pretence for the introduction of the English Law of real property.

It is an universal principle of Law in Europe, that in all questions respecting immoveable property, the 'lex loci rei sitæ' prevails; and we think it both right and useful that the same rule should be acted on in the administration of Justice in China."

**The opinion of the law officers of the Crown.**

Some months back, a Commission had been issued by the Governor to certain officials to inquire into the system under which the Police Force at Hongkong was constituted and governed.* At the time some witnesses were examined, but, owing probably to the expected arrival of Mr. Anstey and the contemplated departure of Mr. Bridges, the acting Attorney-General, who was on the Commission, the proceedings were dropped, and on the 20th March the Governor re-appointed a Commission, the names of the Commissioners, however, being left out in the notification. At the same time Sir John Bowring inspected the Force at the Government Offices, there being present twenty-six European, one hundred and seventy-three Indian, and nineteen Chinese out of a total of two hundred and thirty-nine men. His Excellency expressed himself much pleased with the appearance of the men, but the wish was expressed that he had had cause to be equally pleased with the performance of their proper duties. The reverse of this was said to be the case.

**Commission to inquire into constitution of Police Force.**

**Inspection of Police Force by Sir John Bowring.**

Lately there had been numerous desertions from the ranks of the 59th Regiment. It being suspected that a number of deser-

**Numerous desertions**

* See *antè* p. 361.

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ters were secreted on board the American whaler *Canton Packet*, from the 59th Regiment. Nine found on board an American whaler. Inspector Jarman with a party of Police proceeded on board that vessel on the evening of the 27th March, when *nine* were ferreted out of their hiding places. These were so cunningly designed and well concealed that it required the scaldings of boiling water and pricks from sharp swords before the renegades were compelled to unearth themselves.*

Mr. Hillier, Chief Magistrate.

From time to time charges of gross carelessness in his magisterial capacity had been laid at the door of Mr. Hillier, the Chief Magistrate. On Monday, the 31st March, at the Criminal Sessions, this carelessness was prominently brought to the notice of the Court by the Attorney-General, who, in Mr. Hillier's presence, stigmatized certain depositions under his hand as "the most slovenly and careless depositions he had ever seen." The case which brought this most prominently forward was a charge of burglary against two Americans named Forest and Wise, and an Englishman named Oliver, and a Chinese named Ayow, the first two being Police Constables. On being cross-examined, it came out that none of the witnesses positively identified the prisoners at the Police Court. The principal witness, who swore positively as to the identity in the Supreme Court, said that at the Magistrate's Court she swore she could not identify the prisoners. The Attorney-General to the Court: "This is rather important evidence, but none of it appears in the depositions taken before the Magistrate's Court"! Mr. Anstey then proceeded to characterize *the depositions in the terms stated above. The Court* thought it was very material that the evidence as to identity should have appeared, and directed that the Chief Magistrate should be sent for to explain the depositions. On Mr. Hillier's arrival he was sworn. All the explanation he could give was, that he had taken most particular care in taking these very depositions; that he had taken down everything that he thought relevant. Then arose the following extraordinary conversation, which is taken from the records of the time, between the Court, Mr. Hillier, and the Attorney-General:—

Charges of gross carelessness. How Mr. Anstey characterized the depositions taken by Mr. Hillier.

Regina *v.* Forest, Wise, Oliver, and Ayow.

The Chief Justice directs Mr. Hillier to be sent for.

Extraordinary scene between the Court, Mr. Hillier, and the Attorney-General.

*The Chief Justice*—(staring with surprise at Mr. Hillier).—Do you not think it a relevant matter as to whether the prisoners were identified or not?

*Mr. Hillier.*—I take down everything positive. I always ask if the prisoners are identified, and if they are I put it down.

*The Attorney-General.*—Do you not think it necessary to take evidence in favour of, as well as against, the prisoner?

*Mr. Hillier.*—My duty is to take down positive and relevant evidence in support of the charge. I do not remember whether the question was put as to identity, but if the prisoners had been identified I would have taken it

* On this subject, see also *antè* Chap. XIII. § I., p. 323.

down, and can only say that I took great pains in taking down the evidence in this case. Ch. XVI. § II. — 1856.

[The Chief Justice here leaned back in his chair in a state of profound astonishment at Mr. Hillier's ideas of evidence.]

*Mr. Hillier*—believing that he had fully satisfied the Court, then proceeded—My Lord, I am informed that the Attorney-General has been maligning me behind my back, and I now wish him to say to my face what he then said.

*The Attorney-General.*—I have no hesitation in repeating what I said, that the depositions are the most slovenly and careless depositions that I ever saw.

*Mr. Hillier.*—Will the Attorney-General point out where they are slovenly and careless?

*The Attorney-General.*—I am not here to answer the questions of the witness, but I do not mind telling the Chief Magistrate that I have just been examining him upon some of the faults of which I complain in the depositions.

Mr. Hillier claims the protection of the Court against Mr. Anstey.

*Mr. Hillier.*—My Lord, I think it very unfair that a public servant in my position should be maligned behind his back, and I should feel much obliged if you would restrain Mr. Anstey from using the uncalled-for censure which he unsparingly uses against every person.

In addition to the above, Mr. Anstey complained that the Magistrate and Coroner thought it merely necessary to write down "that one witness corroborated the other"—instead of taking the evidence of each in full. After Mr. Hillier had withdrawn, the case under consideration was proceeded with, and in the end, being found unanimously guilty, Wise and Oliver were sentenced to ten years', while Forest and the Chinaman Ayow received seven years', imprisonment with hard labour. Wise and Forest were, as stated, Americans, and on the 10th and 24th November, 1858, they both received a free pardon on condition that they did not return to the Colony.

The Magistrate and the Coroner merely thought it necessary to write down "that one witness corroborated the other." Conviction of Forest and others for burglary.

Mr. Hillier apparently had determined to gain public notoriety, for, not satisfied with what had already taken place in open Court the day before in connexion with his capacity for discharging magisterial duties, on the 2nd April, the last day of the Sessions, he again made his appearance in Court and repeated his demand "for restraining the Attorney-General," adding at the same time that he had addressed the Colonial Secretary on the subject, and concluding—"If Your Lordship will give me a memorandum of what evidence I ought to take down, I shall attend to it." This alone showed how ill-fitted Mr. Hillier was for his position. The Chief Justice, astonished at the request for a memorandum, said nothing. With regard to restraining the Attorney-General, His Lordship said that, as Mr. Hillier had addressed the Colonial Secretary, the matter was taken out of the hands of the Court. The Attorney-General called the atten-

Mr. Hillier's re-appearance in Court.

His demand "for restraining the Attorney-General," repeated.

He asks the Chief Justice for a memorandum as to what evidence he is to take down.

The Chief Justice's

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tion of the Court to the very depositions in connexion with the case in which he was then engaged and on which a scene of crimination and recrimination arose between him and the Chief Magistrate, the Attorney-General insisting, in his capacity as grand jury, that the Magistrates had no right to decide what was or was not corroborative evidence. In the course of the squabble, during which, needless to say, the jury and all the rest in Court were spectators, appreciating it or otherwise, the real value of depositions being taken *in extenso* came out incidentally, viz., that if the witnesses were dead, or absent, the words—"this witness corroborates previous witness," would not be of much use to be read at the trial. The Attorney-General also pointed out that the Coroner, Mr. Mitchell, who was then also present in Court, had said that when he put down these words, he did not ask the witness to sign them. Mr. Anstey further stated that he had given the Chief Magistrate some hints at the time which were gratefully received, but now were treated as of no value. This Mr. Hillier denied, affirming that the memorandum to which Mr. Anstey had referred had reference only to a case then before the Coroner.

demeanour and reply.

The jury and others as spectators during the scene of crimination and incrimination.

The real value of depositions taken *in extenso* disclosed.

Mr. Mitchell here stated that it was his intention to continue the practice condemned by Mr. Anstey. An admonition from His Lordship, however, instantly set him right.

Mr. Mitchell admonished by the Chief Justice.

After further discussion as to the nature of the testimony to be taken down by the Magistrates, in which Mr. Day took part, entirely agreeing with the Attorney-General, the Chief Justice said, no doubt, the Attorney-General would draw up a memorandum for the guidance of the Magistrates. The Attorney-General said it was not a very creditable state of affairs when the Magistrates did not know what evidence they ought to take down, thought it not material if witnesses identified prisoners or not, and above all wanted a memorandum to show them what evidence they were to take down.

Discussion as to the nature of testimony.

Chief Justice says Attorney-General will draw up a memorandum for guidance of the Magistrates.

*Mr. Hillier* then replied—"If the Government are not satisfied with the way in which I discharge my duties, let them get some one else to do them." In this the Attorney-General said he concurred, and thought it was high time, and so probably, as was remarked locally, would most people have done, if it had been possible to give the position to a regularly educated lawyer, but as that for the moment seemed doubtful, a great deal of fencing in public between the Attorney-General and the Chief Magistrate might have been spared.

Mr. Anstey on the 'not very creditable state of affairs' as to the Magistrates.

Further fencing between Mr. Hillier and Mr. Anstey.

Some of the cases tried at this Sessions were of the worst description as regards the Police Force especially. In another

Criminal cases of the worst

case different from the above, two Indian Police Constables for extortion were found guilty and sentenced to two years' imprisonment. George Brady, another Police Constable, charged with robbery with violence, was acquitted on the ground of insufficient identification. In another case against the Police, Constable Carvalho was sentenced to six months' imprisonment with hard labour, for attempted extortion of money from Chinese emigrants.

1856. description against the Police.

Conviction of Indian Police for extortion.

P.C. Brady charged with robbery.

Case against P.C. Carvalho for attempted extortion.

Police reformation was the crying want, and a worse Force than that of Hongkong then was not conceivable.

Police reformation the crying want.

The Court occasionally had not unwillingly lent a favourable ear to prisoners whenever they applied for the assistance of counsel to defend them before the Criminal Sessions,* and at the present Sessions William Kelly, charged with stabbing with intent, begged the Court to allow him counsel. Mr. Kingsmill, on a hint from the Chief Justice, tendered his services, as did likewise Mr. Cooper Turner, as attorney.

Prisoners and the assistance of counsel.

Messrs. Kingsmill and Cooper Turner appointed in Court to defend a European prisoner.

The interpretation at this Sessions was also very bad and was the cause of the Sessions coming abruptly to an end, one Chinese prisoner remaining untried at the request of the jury on the ground of want of a proper interpreter. The Attorney-General said he gladly acquiesced in the recommendation of the jury—he had repeatedly throughout the Sessions expressed his opinion of the interpretation.† The Chief Justice told the Jury he had written to the Governor on the subject, and had recommended that Mr. Caldwell should be re-engaged.‡ Thus ended this extraordinary Sessions.

Interpretation again.

Criminal Sessions end abruptly owing to the want of an interpreter.

Mr. Anstey's opinion of the interpretation.

On the 2nd April, Mr. Robert Goodings, the Gaoler, died. He had for upwards of twenty years been the servant of the Home and local Governments in various capacities. On the 4th of the same month the death took place at Larkbear, Exeter, of Mr. Charles Bowring, the father of Sir John Bowring.

The Chief Justice says he has recommended the re-employment of Mr. Caldwell.

Death of Goodings, the gaoler,

The sweeping changes introduced by the recent Ordinances affecting the procedure of the Court§ without the lawyers having in any way been consulted beforehand by the Attorney-General, as was to be expected, proved more than unpalatable to the legal profession, and the attorneys of the Court accordingly memorialized the Chief Justice requesting him to obtain from the

* On this subject see *antè* Chap. XIII. § I., pp. 325, 326, and references there given.

† On the question of interpretation, see *antè* Chap. XI., p. 223; Chap. XII. § I., p. 294; Chap. XIII. § I., p. 327: Chap. XV., p. 349, and *antè* pp. 361, 362, 371, and other references there given.

‡ *Antè* p. 361 and reference there given.

§ *Antè* p. 376.

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Legislative Council a suspension of the Ordinances Nos. 5 and 7 of 1856, in order that they might obtain the necessary books of practice and Acts of Parliament. This memorial the Chief Justice considered reasonable, and recommended it to the Council, in which recommendation he was supported by the Honourable Mr. Edger. The reply, however, was that, "by the advice of the Attorney-General, the Governor declined granting the time required by the attorneys to make themselves acquainted by the law." The worst part of this refusal, however, lay in the fact that both the members of Council had only consented to the Ordinances coming into force on the assurance of the Attorney-General that the attorneys were all prepared. The application of the attorneys gave an emphatic and formal denial to the assertion of the Attorney-General, who said that it was by the request of the attorneys that the thing was passed through, naming one in particular. To this the attorneys gave another emphatic denial, and would have embodied the same in a letter to the Chief Justice had not the Governor been so very sharp in his decision, which, after all, might not have been looked upon as a very valid one as it had been given without the full consent of the Legislative Council. At all events it was improper, in the highest degree, that the Attorney-General should have opposed himself to the head of the Court who had to administer the laws, and who was responsible for their correct administration, while the Attorney-General was not, and when that head expressed his opinion in favour of the unanimous and reasonable request of all the members of the lower branch of the profession.

The attorneys of the Court memorialize the Chief Justice for a suspension of Ordinances Nos. 5 and 7 of 1856.

They wish to obtain the necessary books of practice and Acts of Parliament.

The Governor's refusal.

Improper conduct of Mr. Anstey as regards the Chief Justice in the matter.

Sir John Bowring would have showed more sense had he taken the advice of the Chief Justice rather than that of one new to the Colony and who, during his short residence, had already shown but little discretion.

Sir John Bowring criticized.

In consequence of the shabby treatment they had received, the attorneys held a meeting on Friday afternoon, the 16th May, when it was resolved to memorialize the Government that, in the event of any Ordinance affecting them being brought before the Legislative Council in future, it be published for their, and general information, before it was passed.*

The attorneys hold a meeting to procure that Ordinances affecting them be published in future before being passed.

The April Criminal Sessions were ended in less than two days with only one remanet. The interpreters are said to have discharged their novel functions with ability and fairness, and the depositions appeared to have been taken down by the Magistrates with greater care.

April Criminal Sessions.

* Upon the subject of hasty legislation in regard to the introduction of Acts of Parliament into the Colony, and the Secretary of State's views upon the matter, see Chaps. XXIV. and XXV., *infrà*.

1856.

In consequence of the resignation by Mr. Robert Dundas Cay, who had now been on leave for some considerable time,* of his office of Registrar of the Supreme Court, on the 29th April it was notified that, under instructions from the Secretary of State for the Colonies, Mr. Alexander † had been appointed Registrar, and that Mr. Masson ‡ would act as Deputy Registrar pending the pleasure of Her Majesty's Government, he being eventually confirmed in the appointment by Notification of the 30th September. The exact reason for Mr. Cay's resignation of his appointment was never known.§ It may be recollected that he first arrived in the Colony with the other judicial authorities in May, 1844.‖

Resignation of the Registrarship by Mr. Cay.

Appointment of Mr. Alexander as Registrar.

Mr. N. R. Masson, Deputy Registrar.

At the end of April, the news reached Hongkong that Mr. Hillier, the Chief Magistrate, had been appointed Her Majesty's Consul at Siam. This was the first appointment of the kind in that country and must be looked upon as the outcome of Sir John Bowring's visit to Siam early last year.¶ The Colony lost in him, if not the brightest, certainly one of the most honest, conscientious, and straightforward of its servants. He left with his wife on the 10th May, by the P. & O. Steamer *Singapore*, for Bangkok *viâ* Singapore, to take up his appointment, and considering his long and honourable career in this Colony, it is not considered out of place to reproduce *in extenso* what was said of him at the time by the leading exponent of public opinion in Hongkong, and which fairly represents one's reading of the past in reference to this gentleman. The extract also shows the farewell which he, as a popular officer, received on his departure from the Colony :—

Mr. Hillier appointed Her Majesty's Consul at Siam.

His departure.

His long and honourable career in the Colony

The farewell given him as a popular officer.

"An independent, painstaking, and conscientious official is so great a rarity, that the departure of such an one from a limited community like that of Hongkong is severely felt. Mr. Hillier, in whose uprightness and integrity as Chief Magistrate, both natives and foreigners reposed almost unlimited confidence, the Chinese especially, have lost a warm and steadfast friend. Of this they seem to have been aware, by the tokens of respect they showed him at his departure. A large procession was formed at the temple near Taipingshan, which proceeded to Mr. Hillier's residence, accompanied by music and bearing two splendid sedan chairs, such as are used in religious processions for the gods,—one chair containing a basin of water, the other a looking-glass, implying that his character was pure as water and unstained as glass. An address was also presented to Mr. Hillier by the Chinese, and a gilt tablet bearing testimony of their respect and good-will. The procession afterwards proceeded through the city, notifying to the Chinese population their irreparable loss.

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* See *antè* Chap. XIV. § I., p. 332, and Chap. XV., p. 353.

† See *antè* Chap. XIV. § I., p. 332, and reference there given.

‡ *Antè* Chap. XV., p. 354.

§ "Mr. R. D. Cay, the first Registrar of the Court, was a Scotchman with a large family, which is about all we know of him, nor can we tell why he threw up such an excellent appointment." *The Early History of Hongkong.*—W. TARRANT, p. 87.

‖ *Antè* Chap. II., p. 47.

¶ *Antè* p. 358.

Ch. XVI § 11. — 1856.

But to the foreign community as well, the loss is very great, and will be the more felt from the difficulty likely to be experienced in filling his place. A barrister may be procured, who will dispense to the Chinese more law, but we are not likely to have a Magistrate from whom they will receive as much justice. Mr. Hillier's intimate knowledge of the Chinese language and of Chinese customs enabled him to keep down abuses, and elicit truth where one ignorant of the language would wholly fail. Alas, now for the poor Chinese under the mysticisms of the law, and in the hands of unprincipled interpreters! Already is Mr. Hillier's absence from the Bench seriously felt."

**His death not long after.**

But Mr. Hillier's good fortune was not for long. With deep regret the announcement was received in Hongkong, on the 18th November, that Mr. Hillier had died of dysentery on the 14th October on board the American ship *Don Quixote*, to which he had been conveyed for treatment, accompanied by Mrs. Hillier, and the surgeon of the surveying schooner *Saracen*.

**Public opinion of Mr. Hillier in Hongkong.**

Public opinion in Hongkong agreed that, for uprightness and integrity of character, few men in the Colony could have been compared to him. During the short time that he was in Bangkok he had made himself much liked, rumour had spoken warmly of the benefits accruing to foreigners from Mr. Hillier's exertions and influence with the Siamese, and his death was much regretted there.

**His funeral in Bangkok.**

His funeral was attended by the heir apparent as well as by the King's youngest brother. The *Saracen* fired minute guns. The procession of boats extended nearly a mile three abreast.*

**Changes on Mr. Hillier's departure for Bangkok.**

After Mr. Hillier had left Hongkong to assume the duties of the Consulship in Siam, Mr. W. H. Mitchell, the Assistant Magistrate, Sheriff, and Marshal of the Vice-Admiralty Court, was gazetted acting Chief Magistrate, Mr. Charles May acting in lieu of Mr. Mitchell, and Mr. Grand-Pré as acting Superintendent of Police under Mr. May's occasional supervision. The duties of Coroner were performed by Mr. May, and the gaol inquests were held by Mr. Mitchell.

**Mr. H. T. Davies appointed Chief Magistrate of Hongkong.**

These appointments, however, all came to an end in November, on the arrival of Mr. Henry Tudor Davies, barrister-at-law, who had been appointed Chief Magistrate in succession to Mr. Hillier.

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* A local paper of the time alluding to Mr. Hillier has the following in reference to his meritorious career in Hongkong—"Mr. Hillier came first to China in some subordinate capacity on board a merchant ship, from which, still in his teens, he was taken into the establishment of Fergusson, Leighton, & Co. That firm failed in 1842, and in the same year he was appointed Clerk in the Police Court. Close application to the study of the Chinese language, and excellent ability at performing the will of his Chief (the present Lieutenant-Governor Caine, then Chief Magistrate)* procured him steady promotion—Clerk of Court; Assistant Magistrate; Sheriff; Coroner; Chief Magistrate; member of the Legislative Council; member of Schools Committee; Emigration Commissioner, etc, all in turn have fallen to Mr. Hillier's lot." In addition to the foregoing it may be noted that Mr. Hillier was married, on the 28th May, 1846, to Eliza Mary, daughter of the Reverend Walter H. Medhurst, D.D., of the London Missionary Society at Shanghai. His wife, at his death, was allowed a pension from the Civil List of £50 a year.

* See *ante* Chap. VII., p. 147, *note*.

Rear-Admiral of the White, Sir Michael Seymour, K.C.B., appointed to command the naval forces in China,* in succession to Admiral Sterling (Admiral of the Red) arrived in Hongkong in H.M.S. *Encounter* on the 6th May, 1856, and at once shifted his flag to the *Winchester*, pending the arrival of the *Calcutta*.



1856. Admiral Seymour appointed Naval Commander-in-Chief Sterling.

It had been incorrectly stated that Admiral Sir James Sterling, who had left Hongkong for England in February, had been recalled at his own solicitation. Mr. Ross D. Mangles, in a letter to *The Times*, stated that Sir James Sterling had not been recalled, but had resigned,—"a course he had for some time contemplated in consequence of ill-health." With reference to Sir Michael Seymour, it may be noted that he had been second in command of the Baltic Fleet in 1855, when he lost an eye by the explosion of a Russian infernal machine on board the *Exmouth* and for which he was afterwards granted the usual service pension. In September, 1856, he was further gazetted a Rear-Admiral of the Red.

Mr. Anstey holds an inquiry respecting expenses of civil procedure and practice, etc.

On the 8th May it was notified that the Governor had authorized Mr. Anstey, the Attorney-General, to institute an inquiry into the subject of the expenses of civil procedure and practice generally, including office fees, fees of counsel, and attorney's costs. Officers in the service of the Government were directed to assist the Attorney-General in his investigations, and all persons interested were invited to supply such information as was in their power. The upshot of this, no doubt, was the passing, on the 31st July, of Ordinance No. 14 of 1856 (relating to Fees and Costs).

Passing of Ordinance No. 14 of 1856 as the result.

Departure of Lieutenant-Colonel Graham. Lieutenant-Colonel Dunlop acts and is made a member of the Executive Council.

On the 10th May, Lieutenant-Colonel Hope Graham,† officer commanding the troops and a member of the Executive Council, left for England on leave, being succeeded for the time being by Lieutenant-Colonel Franklin Dunlop until the 30th April, 1857, when he resumed command and his seat in the Executive Council.

Execution of Samarang for murder.

On Monday morning, the 19th May, the extreme penalty of the law was carried out on the person of a Malay named Samarang, who, at an extra Sessions held on the 3rd May, had been found guilty of the murder of a Chinese girl on the morning of the 30th March, on board of a receiving-vessel at Swatow. The gallows for this intended victim of the criminal law had apparently been erected some days before the execution, near the north-east corner of the Magistracy compound. The execution was conducted in a most shameful manner, the unfor-

Place of execution.

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* See *antè* Chap. XIV. § II., p. 342.

† *Antè* p. 359.

Ch. XVI § II. 1856.

tunate man, after having the rope adjusted, being obliged to wait whilst efforts were twice in vain made to knock out the bolt, which was only finally performed after the poor wretch had been taken off the gallows and sent to the guard-house, whilst some of the gaol people got the bolt into working order. Such a cruel and disgusting exhibition, the result of apathetic indifference towards the sufferings of the wretched prisoner, and at which *humanity* might well have shuddered, was by no means unprecedented in the annals of Hongkong. But, as usual, no one was held to blame.

Samarang's cruel and disgusting execution.

Prior to this execution, a piece of ground lying immediately above the old Naval Stores had been used as a place for executions, but it having become too valuable to be used any longer for such a purpose, it was sold by the Government and now the place, previously mentioned, had become the "Tyburn" of Hongkong.

Previous execution spot.

The gallows after executions remain exposed to public view.

There was nothing to be said against the site thus fixed upon by the authorities, but public opinion demanded, on behalf of the ladies and children who it seems at this period made Caine Road a promenade, that at least a screen should be thrown up to hide from their eyes so disgusting and abhorrent a sight as the "gallows tree."

A protest.

An important Ordinance passed on the 29th May, was No. 10 referring to "Lis Pendens and Purchasers."

Ordinance No. 10 of 1856.

Lis Pendens and Purchasers.

The principal matter of interest during this month was a well authenticated rumour that Mr. Anstey, the Attorney-General, had grossly and malignantly slandered the Chief Justice by remarking, at a dinner at Government House, that the Chief Justice had exceeded the bounds of temperance. This was repeated to Mr. Hulme, who immediately called on Mr. Anstey to retract his remark. The profound respect and esteem which was felt for the intended victim of the calumny, and the falsehood of the charge having been most clearly and fully established, a letter of sympathy and indignant protest against the calumny, signed by almost, if not quite, every foreign resident unconnected with the Government, was without delay presented to the Chief Justice, as well as another letter from the members of the legal profession. Mr. Anstey, instead of, like a gentleman (after the evidence which had been adduced in favour of Mr. Hulme, against the base assertion brought to his door) apologizing for his mistake, on the contrary repeated the charge in most offensive language. As will be seen the Secretary of State, to whom the matter was referred for decision, took quite a different view of the facts, and Mr. Anstey now only got his

Mr. Anstey slanders the Chief Justice.

He charges the Chief Justice with having exceeded the bounds of temperance.

Sympathetic and indignant protest by the community and the legal profession.

Mr. Anstey repeats the charge.

The Secretary of State takes a different view.

deserts. The following is an extract from the Secretary of State's despatch upon the subject, dated the 28th August, 1856 :— Ch. XVI § II. 1856. The despatch.

"Mr. Anstey avails himself of it" [the appeal to the Secretary of State] "not by expressing his willingness to make the apology which the evidence brought forward on behalf of the Chief Justice seemed to render proper, nor even by simply declining to give that apology, but by a letter, in which he repeats the charge in what I must term very virulent and offensive language, calculated, as far as in him lay, to degrade and vilify his superior functionary ; and Mr. Anstey himself repudiates the excuse that he had only used ordinary freedom in remarking on the Judge's demeanour on some private convivial occasion, by distinctly stating that the occasion was public, one of 'high official ceremony.' Mr. Anstey stands, therefore, in the position of an officer who has made a charge of serious official misconduct against another superior in position to himself, and refuses to retract or to apologize for it, although his charge is rebutted by strong evidence, and supported, as far as the papers before me show, by none .....

My decision on the matter referred to me by both parties as well as yourself is, that Mr. Anstey owes a public expression of regret to the Chief Justice for the language which he has used respecting him ; if he refuses to tender it, I am reluctantly compelled to add, that your duty will be to summon him before the Executive Council, to suspend him from his office, unless some new ground of justification, which I cannot anticipate, is advanced, and to report the proceedings fully to Her Majesty's Government, with any statement which Mr. Anstey may think fit to make for their ultimate decision thereupon."

Needless to say that after such a severe reprimand as that contained in the foregoing despatch, Mr. Anstey made public reparation to the Chief Justice which avoided the necessity of his being suspended from office, but the people of Hongkong had already been able to judge sufficiently of Mr. Anstey to form an opinion of him, and the hope was now fervently expressed that the indignation which his conduct had aroused would prove a lesson to him, and that, for the well-being and comfort of the Colony, he would soon be removed to some more congenial spot. Mr. Anstey afterwards makes public reparation to the Chief Justice. Indignation which Mr. Anstey's conduct aroused.

A local paper, while reproducing the following extract taken from *The Journal of T. Raikes, Esq.*, Vol. I., p. 243, in reference to Sir John Bowring, the Governor, whose age alone had now begun to disqualify him for the onerous and important position which he held, quite apart from his unpopularity, which was already fully evident, added as a prefix to the document the following words :—"The following is the character given of Sir John Bowring twenty years ago. There are few people who have had anything to do with His Excellency who will not agree that the likeness is a wonderful one"* :— Character of Sir John Bowring from 'The Journal of T. Raikes, Esquire.'

"The French Government has made some slight concessions as to the duties on a few articles imported from England, rather to meet the clamour

* See *Hongkong Register*, 3rd June, 1856, p. 90.

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of the nation on these points, than to promote any new commercial intercourse between the countries. They are in fact unimportant, but Dr. Bowring, delighted, after three years' ineffectual pressing and supplication here, to have obtained even this slight relaxation, is gone over to London with the proposal. Of all men, high or low, that I ever met in society, this Dr. Bowring is the most presuming and the most conceited. He is a fit *charlatan*, for Whig employment; pushing and overbearing in his manner, and, like other *parvenus*, assuming an official importance which is highly ridiculous. Some years ago, he was arrested by the French Government at Boulogne and his papers seized. Irritated at this embarrassment, he wrote a most violent letter to the police in Paris, in which, after bitterly complaining of this infraction of the Law of Nations, he concluded by saying, that the Bourbons had committed an act on his person which might hurl them from their throne."

Mr. Anstey confirmed as a member of the Legislative Council.

*The London Gazette* of the 10th June, announced that Mr. Anstey had been appointed a member of the Legislative Council, and on the 26th August he was gazetted locally as having been duly confirmed to the seat to which he had previously been appointed.* From this date the Attorney-General has had a seat in the Legislative Council.

Ordinance No. 13 of 1856.

On the 21st June, Ordinance No. 13 of 1856 "for the admission of candidates to the rolls of practitioners in the Supreme Court, and for the taxation of costs" was duly passed. Under section 7, "no person *bonâ fide* domiciled within the Colony, and who complied with the provisions of the Ordinance, was disqualified from obtaining such admission as aforesaid merely by reason of alienage, or that he is by birth a Chinaman."

Yung Awing, an articled clerk to Mr. Parsons, objected to as an interpreter of the Court.

Owing to the dearth of interpreters, Government recently obtained temporarily the services of one Yung Awing, an articled clerk to Mr. Ambrose Parsons, the solicitor, as Chinese interpreter to the Supreme Court. This was strongly objected to because apparently this articled clerk still remained in the service of Mr. Parsons, and though serving in the Supreme Court was still putting in time in Mr. Parsons' office.

Mr. Anstey's opinion that Yung Awing's appointment incompatible with the provisions of Ordinance No. 13 of 1856.

His resignation.

On the 1st July, on the opening of the Court, Yung Awing informed the Chief Justice, in consequence of a conversation he had had with the Attorney-General relative to the new Ordinance regulating the admission of practitioners in the Supreme Court, that he would feel obliged if the Court would release him from his duties as interpreter, as the Attorney-General was of opinion that his holding that office was, as laid down in the Ordinance, incompatible with his position as articled clerk to Mr. Parsons. The Court acceded to the request.

Gaol misgovernment. Mr. Anstey files a criminal information

On the many startling events which had recently occurred in connexion with the administration of justice in this Colony since the advent of Mr. Anstey, one that was most likely to bring him into further disfavour, thereby justifying the

* See *antè* p. 371.

prediction of *The Liverpool Albion* at the time of his appointment that "he had gone to the Celestials in a diabolic frame of mind," * was the case which he now instituted against Mr. W. H. Mitchell, the Sheriff, for an alleged misdemeanour in his capacity of Sheriff.

against the Sheriff, Mr. Mitchell, for a misdemeanour.

The charges were for misdemeanour in extorting, or causing and inciting others to extort, money from prisoners in his custody as Sheriff, and were set forth in an information containing thirteen counts,—an ominous number. The facts shortly were these. On the 1st March last six of the prisoners concerned in the East Point murder, previously reported,† were sentenced to death, and against one sentence of death was recorded. At a subsequent inquiry before the Governor and Executive Council, one prisoner was pardoned, and the one against whom death was recorded and the five others who were sentenced to death had their sentences commuted into transportation for life. It was the custom in the Gaol at this time, as is indeed believed to be the universal custom throughout the British Dominions, to give a somewhat better and more nourishing diet to prisoners under sentence of death. On the return to Gaol, after their condemnation in the Supreme Court, of the six men alluded to above, and of the two others also condemned to death as referred to before, the Sheriff in the usual manner intimated to the Chinese turnkey, who had held that situation six years and who previously had had many condemned prisoners under his charge, that the prisoners under condemnation were to have the very best rations, naturally believing that the turnkey's experience in such cases would be sufficient for him. Such in fact had been the custom in the Gaol.

The charges.

The facts.

The requisition for such extra allowance had been duly made, allowed, and the money paid in all former cases, and these arrangements for such extra allowance had always been made through the contractor who supplied the Gaol with provisions. What induced the turnkey in this instance to deviate from the usual custom did not appear on the evidence. He did so, however, for, on intimating to the prisoners that they were to have the best 'chow,' the latter sent him to a cook-shop each day with a bill of the next day's fare regularly drawn out. The turnkey told the owner of the cook-shop that the provisions were wanted for the Government Gaol; to which the reply was: "I never deal with foreigners, and shall not supply the food unless you make yourself responsible." The turnkey agreed to become responsible, and the food was supplied. Under these arrangements, the fare, asked for and supplied, was of the most

* *Antè* p. 369.
† *Antè* p. 376.

Ch. XVI § II. 1856.

luxurious description, and the expense incurred as large as that incurred by most respectable Europeans.

About the 18th of the month it became known to the Gaol authorities that the six 'East Point' prisoners would not be executed, and they were immediately placed on the usual gaol rations, while the extra rations were continued until the 26th to the other two prisoners, on which morning they were executed. At the end of the month the bill from the cook-shop, amounting to *two hundred and twenty-seven dollars*, was presented to Mr. Mitchell on the Bench during an interruption of business. He, indignant at what he conceived to be an attempt to extort money from the Government, tore it up and told the turnkey, who brought it to him and in whose name it was made out, that the Government would pay as usual the one shilling per man per diem, and nothing more. The requisition was sent in on these terms, passed, and the vouchers amounting to £7. 2*s*. 0*d*. made out. This sum was tendered to the owner of the cook-shop and by him at first refused, but afterwards accepted as part payment of his bill. As, however, he kept dunning the person he considered his debtor, the turnkey, the latter spoke to Mr. Mitchell who replied that the Government would not pay anything more, but added that the Gaoler might, if he liked, speak to the men *to get their friends to pay some of the money* to help the owner of the cook-shop. The Gaoler did speak to the prisoners, and this constituted the indirect attempt at extortion alleged, in the first six counts, to have been committed on the 6th April by Mr. Mitchell. This application, however, if made, was not successful. On the 13th April, the direct attempt at extortion was made, as alleged in the next six counts, and the promise held out of favour and protection as alleged in the last count. The attempt was made in this wise: Mr. Mitchell came to the Gaol and, at the request of the turnkey, went and spoke to the five prisoners, one, it will be remembered, having received a free pardon. The Gaoler, Mr. McKenzie, was present. Mr. Mitchell recommended the men to write to their friends to ask them for some money to pay the cook-shopman, adding as a further inducement that otherwise the turnkey would be held liable. Mr. Mitchell then went away and had no further communication with the prisoners. These were, shortly, the facts of the case. It may be added that upon reports of this matter reaching Mr. Anstey's ears, he at once proceeded to make an inquiry in which Mr. Mercer, the Colonial Secretary, took part, but at which Mr. Mitchell, the official most interested, was never present, or allowed even to attend, though his subordinates were examined, and the result of which led to the institution of the charges described above. While the inquiry was being conducted, Mr. Mitchell,

Mr. Mitchell advised certain prisoners to write to their friends for money to pay for certain charges.

Mr. Anstey makes an inquiry.

feeling no inclination to lie under the imputation of having acted illegally as Sheriff, laid his case, in a letter dated the 6th June, before the Secretary of State, and on the same day the Attorney-General, receiving no instructions from the Government to proceed, by a singular coincidence, recommenced operations by appointing an interpreter to meet him at the Gaol. Having made his inquiry, he made his report, and at this point instead of stepping in and commanding the Attorney-General to stop all further proceedings, as the matter was for the present at all events out of the hands of any one in the Colony, the accused having appealed to the Secretary of State, Sir John Bowring stood still and allowed the strife to go on between Mr Anstey and Mr. Mitchell, who now had, on his part also, instituted a charge of malicious slander against Mr. Anstey for saying that he (Mr. Mitchell) had been guilty "of gross magisterial delinquency."

Sir John Bowring's attitude of indifference.

On the 11th June, in acknowledging receipt of Mr. Mitchell's appeal to the Secretary of State, the Governor informed him that "he was doubtful of his power to control the Attorney-General in his capacity of Grand Juror when making a preliminary investigation, and that he was sorry to learn that a war of mutual attack was being carried on between himself and the Attorney-General, which whatever else may be the consequences could not but bring with it much scandal and opprobrium," and ended by desiring that some means be found of terminating these "unhappy discussions."

He is 'doubtful of his power to control the Attorney-General.'

The war of mutual attack between Mr. Mitchell and Mr. Anstey.

Mr. Mitchell, in reply, on the 16th June, stated that he was only defending himself against the attacks of Mr. Anstey, who he said, alone was responsible for the scandal.

Mr. Mitchell informs Sir John Bowring he is only defending himself against Mr. Anstey's attacks.

On the 19th June, the Governor directed Mr. Mitchell to be informed that he "had also become aware that a criminal information had been filed against him by the Attorney-General, while, according to rumour, a civil action for defamation at Mr. Mitchell's suit was pending against the Attorney-General." The letter then proceeded :—

The Governor's reply to Mr. Mitchell and the latter's action for defamation against Mr. Anstey.

"The public scandal which is associated with these disputes between two gentlemen of high official rank is, if possible, most desirable to avoid, and it is His Excelleney's most earnest wish that these actions should not be allowed to proceed, and for the accomplishment of so desirable a result His Excellency will be happy to lend his aid."

Mr. Mitchell informs Sir John Bowring the difficulty admits of no compromise.

To this letter, Mr. Mitchell on the 21st June replied "that the difficulty in hand admitted of no compromise, and he demanded as a right that the criminal information filed against him be prosecuted to final judgment as affording him an opportunity of clearing his personal honour of a foul

Ch. XVI § II. 1856.

scandal." In the meantime the case against Mr. Mitchell by the Attorney-General for attempt at extortion was fixed for hearing on the 25th June, and on the 12th June, in the case against him by Mr. Mitchell for slander, Mr. Anstey made an affidavit to the effect that he had no confidence in the decisions of Hongkong special jurors and prayed that the case might be tried before a common jury. The following was this strange document:—

Case against Mr. Mitchell by Mr. Anstey fixed for hearing.

In the case of Mr. Mitchell against him for slander, Mr. Anstey makes an affidavit of no confidence in Hongkong special jurors. He asks for a common jury.

*In the Supreme Court of Honghong.*

Between William Henry Mitchell, *Plaintiff*;

and Thomas Chisholm Anstey, *Defendant*.

The affidavit.

I, Thomas Chisholm Anstey, Attorney-General in and for this Colony, the above-named defendant, make oath and say as follows:—

1. In the discharge of my official duties as such Attorney-General and also as member of the Legislative Council, and of the late Praya Commission, I have unavoidably incurred much personal ill-will from the holders of Crown lots, and owners of house property in this Colony, which ill-will is at this present moment much exasperated by the course I have taken and am taking for amending and making effectual the law for the suppression of certain nuisances.

2. I am informed and believe that the Special Jury list of this Colony is made up and consists chiefly or entirely of the holders of Crown lots and owners of house property aforesaid.

3. I cannot safely go to trial in the above action at law before a special Jury under the circumstances aforesaid, the same having a natural and inevitable tendency to bias and prejudice against me the minds of such a Jury even unconsciously on their part.

(Signed) T. C. Anstey, A.-G.

Sworn at the Court House,
Victoria aforesaid, the twelfth day of June, A.D. 1856.

Before me,
(Signed.) W. H. Alexander,
*A Commissioner, etc.*

The prayer refused.

A gross libel upon the special jurors.

This affidavit at all events, if nothing else, disclosed the opinion in which Mr. Anstey believed he was then held by at least the more respectable portion of the community. Needless to say that the prayer was, of course, refused by the Chief Justice. Complimentary as the application appeared to the gentlemen who formed the common jury, it was looked upon as a gross libel upon the special jurors and as such severely criticized and looked upon as a compliment paid to the common jury at the expense of throwing a gross insult in the face of the Governor and the Legislative Council, who had appointed the gentlemen in the list to act in the capacity of special jurors.

The hearing of Mr. Anstey's

Accordingly, on the date fixed, the 25th June, the case against Mr. Mitchell was called on; it lasted three days, Mr.

Day appearing as counsel for Mr. Mitchell and Mr. Parsons as his attorney. The evidence only supported the fact that Mr. Mitchell had made a suggestion, which was admitted; any threat or promise was totally disproved by the contradictory evidence of the witnesses for the prosecution. At the conclusion of the Attorney-General's address (in the course of which he had compared Hongkong to "a petty Colony cram full of abuses and oppression, but no man would speak out because there was no community of feeling of wrong; there was mutual distrust; there was no Government; there was no society; for Government there was anarchy* and for society *cælus latronum*," and that "he was not there to defend the Government for not ordering this prosecution, and that he was not there to censure them for not doing so"), the Chief Justice intimated that, as the evidence was very voluminous and would take a considerable time to read over, he would adjourn the Court till the next day.

case against Mr. Mitchell. The evidence.

Mr. Anstey's extraordinary address upon Hongkong affairs and people generally.

The jury after a short conference said they did not require the evidence to be read over, but if His Lordship would give his opinion on the law of the case, they might bring in a verdict. The Chief Justice thereupon ruled that a mere suggestion by the Sheriff to the prisoners to writé for money or to raise money to pay the cook-shop for extra provisions supplied them in Gaol could not be considered *an attempt at extortion* in the legal acceptation of the term. The jury thereupon returned an unanimous verdict of *not guilty* which was received with great applause by the great body of Europeans present in Court, which the Judge, however, put a stop to. Thus terminated this serious case brought against a high public official, undertaken and carried through by Mr. Anstey, as Attorney-General, in the name of public justice, against the expressed wish of the Government, and which on trial, dwindled down to as paltry, vindictive, and contemptible a prosecution as ever was brought in a Court of Justice.

The Jury request the opinion of the Chief Justice upon the law of the case.

The Chief Justice rules that a mere suggestion by the Sheriff to prisoners to raise money for extra food supplied them from outside, not an attempt at extortion.

Verdict of not guilty received with applause.

A paltry, vindictive, and contemptible action.

Of the necessity of inquiring into such a charge, there could have been but one opinion, and had Mr. Anstey, who imagined he had discovered the "attempt to extort," conducted himself in a fair and open manner, he would have been well entitled to the thanks of the public, let the inquiry have resulted in what manner it would, especially if, at the inquiry, the accused had been confronted with his accuser and his witnesses. As it was,

Defeat well merited.

* Mr. Anstey had evidently forgotten that he had scarcely been here a month before he had quarrelled with both Mr. Mitchell and Mr. Hillier; that there was a mutual scene of crimination between the three in the Supreme Court, in which Mr. Hillier earnestly requested the Chief Justice to check Mr. Anstey in the use of that unsparing abuse and censure with which he was so ready to attack every one (*antè* p. 379), and which the Chief Justice himself now knew so well to his cost.

Ch. XVI § II. 1856. it was perfectly impossible to imagine that any other result could have been arrived at than that to which the jury came, and the defeat was well merited.

Public opinion.

Upon the result of the case, a leading paper of the time concluded with the following by no means misplaced remarks :—

"By the pursued course we have the Government hurried into action and defeated, before the reference Home has travelled the quarter of its journey to its destination. Suppose the Secretary of State orders an inquiry, he is too late ;—the case is closed, and his despatch waste paper, and all through the extreme foolish imbecility of the Governor. On these facts, as set forth in the letters in evidence, we ask is such a man fit to be Governor? Of Mr. Mercer, the Colonial Secretary's conduct in the matter we are not, from what appears on the face of the evidence, inclined to speak harshly, but he must have seen where the head-strong course of the Attorney-General was leading the Government, and had he been a man of more power of mind he would have forced the head of the Government to stop the Attorney-General's rash career as a direct and positive insult—not only to him, but to the Secretary of State for the Colonies, by taking from out of the hands of the latter, a case which had been particularly referred to him."

The whole society of Hongkong convulsed in quarrels.

Mr. Mitchell's case against Mr. Anstey for slander was not yet ripe for hearing, and, as will be seen, did not come on until the latter end of August.* Meanwhile the whole society of the Colony was convulsed in quarrels, in consequence of the high moral tone taken by the new Attorney-General and his determination to effect reforms or improvements at whatever cost, according to his own fancy.

The Chief Justice takes the Bench at noon owing to bad health. Mr. Anstey objects. The jurymen approve as a protest to the Attorney-General's action. Their letter.

The Chief Justice, probably owing to the state of his health, had begun latterly taking the Bench at twelve o'clock instead of at ten, thinking at the same time that this would not be objected to by the jury or the public generally. The Attorney-General, however, strongly objected, which conduct met with the disapproval of the community and the presentation of a letter by the jurymen approving of the Chief Justice's step as a protest to the Attorney-General's opposition. This goes to show the respect and esteem in which Mr. Hulme was held. The following was the letter :—

Hongkong, 26th June, 1856.

"To the Honourable
JOHN WALTER HULME, Esq.,
*Chief Justice.*

Sir,—Having heard that the Honourable the Attorney-General objects to the Court commencing its sittings at twelve o'clock, on the ground, among others, that it is unfair to the Jury, we, the undersigned Jurymen, beg to state that we are more satisfied with the present hour of opening than we would be with any earlier hour for the following reasons :—

*First*,—It enables us to devote the morning to our business.

* *See* Chap. XVII., *infrà*.

*Second*,—Because six gentlemen having been chosen as jurors, the other four are permitted to go about their own affairs, and are not detained the whole morning, as under the early opening system, waiting the chance of their being called on the afternoon jury.—We have the honour to be, Sir, Your most obedient Servants."

Practice of keeping jurymen waiting when not in the box.

As may be seen, jurymen in those days when not in the box were not discharged as now till the afternoon, but apparently kept waiting until required to sit. It is not said what Mr. Anstey thought of this manifestation of good-will towards the Chief Justice. For some time past it had been rumoured that the Chief Justice might retire at an early date provided some difficulty about a pension were satisfactorily settled. In consequence of this an Indian paper, while commenting upon Mr. Anstey whose idiosyncrasy had reached that part of the world, alluded to the possibility of his succeeding to the Bench and said that "Lord Palmerston took a fine revenge on Mr. Chisholm Anstey by appointing him to Hongkong."

Manifestation of good-will to the Chief Justice.

Mr. Anstey and Lord Palmerston's fine revenge.

Local view of the Chief Justice at this stage and of Mr. Anstey.

As to the rumour that the Chief Justice was retiring or who his successor would be nothing was known positively. He had filled the office since the establishment of the Supreme Court during the last twelve years, had gained the respect, esteem, and affection of every member of the community, and had always been looked upon as the great safeguard and bulwark of the liberty of the Colonists and the English in China "against the efforts of Governors and Superintendents of Trade that somebody or other's 'fine revenge' had inflicted upon them in the shape of Sir John Davis and Sir John Bowring," quite apart from Mr. Anstey who had now succeeded in putting nearly every man in Hongkong against him.

Mr. Labouchere, Secretary of State, informs Sir John Bowring he has no objection to a moderate increase in the number of the Legislative Council.

At this period the Legislative Council of the Colony consisted of the following official members: the Governor, the Lieutenant-Governor, the Chief Justice, the Colonial Secretary, the Attorney-General, the Colonial Treasurer, and the Chief Magistrate of Police, and of the following unofficial members, Messrs. Jardine, Edger, and Lyall.

Secretary of State's approval of Estimates being laid before Legislative Council.

Mr. Labouchere, the Secretary of State, writing to Sir John Bowring on the 29th July, informed the Governor that "he could see no objection to a moderate increase in the number of the Legislative Council, if the Governor thought that desirable, and that he approved of the steps which he had taken in laying the Estimates before that body, and inviting their observations upon the items of public expenditure."

# CHAPTER XVII.

## 1856-1857.

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## SECTION I.

## 1856.

Necessity for a Puisne Judge and new Court House mooted.—The Chief Justice.—The hall of the Supreme Court described.—Point of practice. Precedence of cases for hearing settled.—The 'Buildings and Nuisances' Ordinance, No. 8 of 1856.—Mr. Mitchell and the interpretation of the Ordinance.—Opposite construction given by the Justices to the opinion of the Attorney-General. Dismissal of a Crown case.—The Magistrates refuse to issue summons on fresh complaint by Surveyor-General.—Mandamus granted by Chief Justice, who expresses views opposed to the Justices.—Governor's memorandum to the Justices.—The Justices protest against any interference with them in the discharge of their duties.—Ordinance No. 15 of 1856, amending the law of Evidence and Trial by Jury. —Act 18 and 19 Vict. c. 42.—Ordinance disallowed.—The Police and gambling. Police Constable Randolph charged with extortion.—His confession.—Mr. Anstey upon Police delinquencies.—The Attorney-General's suggestion about a Police Constable's number and cap 'crown' approved by the Chief Justice.—The libel case of Mitchell *v.* Anstey (Attorney-General).—Verdict for the defendant.—The facts.—Mr. Anstey having no confidence in the Stipendiary Magistrates asked a Justice of the Peace to sit with him.—Mr. Anstey concludes his speech in an abusive style. He mentions Sir Wm. Molesworth and the conditions of his appointment.—The speech.—The jury find the communication a privileged one.—Sir John Bowring's demeanour.—The picture of an Attorney-General, as defendant in an action for libel.—Unique in all scandals of the Government of the Colonies. —Mr. Anstey's estimation of the special jury.—*The London Morning Advertiser* upon the result of Mr. Anstey's case against Mr. Mitchell.—A mean attack.—Mr. Anstey suspected. —Hongkong 'the noisome scandal of the East.'—Local valedictory opinion of the Chief Justice.—Mr. Anstey goes to Shanghai.—The Royal Asiatic Society. Paper by Mr. Anstey "on the administration and value of judicial oaths amongst the Chinese."—Differences between the Governor and the Justices of the Peace.—Public meeting.—Ordinance No. 8 of 1856.—Ordinance No. 14 of 1856, sec. 12.—The publication in future of every draft of Ordinance.—Meetings of the Legislative Council to be held with open doors.—The Police.—The Chinese complaint against Indian Police.—Governor considers the complaints against the Police well founded.—Sunday desecration. Government Notification.—Death of Mr. Jardine, M.L.C.—Arrival of Mr. Davies, Chief Magistrate.—State of affairs in the Colony.—Messrs. Mitchell and May as Magistrates.—'The Governor and the governed at sixes and sevens.'—Mr. Caldwell taken into the service again.—He is appointed Registrar-General and Protector of Chinese, General Interpreter, and a Justice of the Peace.—What Mr. Caldwell's re-employment afterwards proved to the Government.—Mr. Anstey returns from Shanghai.—Ordinance No. 8 of 1856.—Forty-four persons summoned.—Mr. Anstey as a Police informer.—He sits by the Magistrate.—Heavy fines and committal to prison.—Demonstration by the Chinese.—Police reinforced by military.—Government Proclamation.—The Proclamation a perversion of language.—Feeling of Chinese against local authorities.—List of grievances formulated.—End of "Anstey Riot."—The Governor notifies to the Chinese Mr. Caldwell's appointment as Registrar-General and Protector of Chinese.—The large powers given to Mr. Caldwell.—Arrival of Mr. Hickson, the first Crown Solicitor.—He is also gazetted as Deputy Sheriff, Coroner, and Queen's Proctor.—Mr. Gaskell relinquishes Queen's Proctorship.—Resignation of Mr. Hickson.—Mr. Cooper Turner appointed Crown Solicitor.—Mr. May, Coroner and Deputy Sheriff.—Royal Asiatic Society. Mr. Anstey's paper —" Did Alexander the Great in the course of his conquests ever reach any part of the Chinese Empire."—Free pardon to Wong Ashing convicted of piracy.—Lanterns and night passes.—Increase to Police Force.—Auxiliary force of European seamen prisoners.—Special Constabulary Force.—Meeting at the Chief Magistrate's office.—The Attorney-General and the form of oath taking by Special Constables.—Voluntary enrolment.—Further increase to European Police Force.

# SECTION II.

## 1857.

Insecurity felt by the community.—Ordinance No. 2 of 1857.—Services of Mr. May given solely to the Police.—His magisterial duties how performed.—Honorary Degree of D.C.L. conferred on Mr. Bridges.—Government Notification regarding persons out of employment.—Military officers gazetted Justices of the Peace.—Mr. Anstey elected Vice-President of the Royal Asiatic Society. The military officers withdrawn from the Commission of the Peace.—The thanks of the Government.—The indignant letter of one of the officers.—Mr. Anstey acts the part of a Police Constable.—He gives a Portuguese gentleman into custody and prosecutes him for alleged obstruction.—His evidence.—The case is dismissed.—An unnecessary piece of severity.—Strictures upon Mr. Anstey.—An amateur constable.—Cheong Ahlum. Atrocious attempt to poison the foreign residents of Hongkong.—The 'Esing' firm.—Cheong Ahlum's departure for Macao.—His arrest.—The sufferers.—The preliminary investigation at the Central Police Station.—The Justices who conducted the inquiry.—Cheong Ahlum and others committed for trial.—Dr. Bridges, Cheong Ahlum's counsel, moves the Court that money found on Cheong Ahlum's premises be given up to pay for his defence.—Attorney-General objects.—Trial of Cheong Ahlum and others.—The Attorney-General denounces Dr. Bridges for violating professional etiquette.—The Chief Justice's ruling.—Barristers to receive their fees through their attorneys.—The evidence in the case.—The Attorney-General upon the case. 'Better to hang the wrong men than confess that British sagacity and activity have failed to discover the real criminals.' Dr. Bridges' argument.—Dr. Bridges and his friend, Mr. Mercer.—Verdict of not guilty.—The Chief Justice's summing up. 'Hanging the wrong man will not further the ends of justice.'—The Chief Justice acquiesces in the verdict of the jury. —The honour of the British name.—After discharge the prisoners are re-apprehended as suspicious characters.—Ordinance No. 2 of 1857.—The Chinese and the prisoners.—Voluntary banishment of the prisoners asked for.—Petitions and counter-petitions in respect of Cheong Ahlum and the other prisoners.—The petitions.—Government decide to keep the prisoners. The crowded state of the Gaol induces the Government to release all except Cheong Ahlum.—Secretary of State's instructions. Cheong Ahlum allowed to leave Hongkong unless fresh facts forthcoming.—The despatch.—Sir John Bowring's reply to the despatch.—The complaint of Mr. Murrow to the Governor against Mr. Anstey regarding alleged insinuations in Cheong Ahlum's case.—A Chinaman sent to prison for trying to bribe a juryman in Cheong Ahlum's case.—The detention of Cheong Ahlum and confederates in the Police cells. Public indignation.—The 'Black Hole' of Hongkong.—Acrimony in England upon the subject.—The 'den' episode and the personal attack on Mr. May.—Government officers and their interest in landed property.—Money-lending by public officers at high rate of interest, and the late Sheriff Holdforth.—Hymn of thanksgiving composed by Sir John Bowring.—His letters containing accounts of the poisoning case.

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**Necessity for a Puisne Judge and new Court House mooted.**

The necessity for a Puisne Judge and a new and more suitable Supreme Court House was now mooted for the first time. The July Criminal Sessions, after lasting some time, was adjourned on Saturday, the 26th July, to Thursday, the 31st, and again to the Monday following, the usual sitting of the Court in summary jurisdiction on the first Friday in the month causing the delay. With the large number of cases usually in the list with a sitting in Nisi Prius, when that list was got through and the Criminal Sessions, the business of the Court was heavy enough for the employment of a second Judge. The Chief Justice, it was pleasantly remarked, had exhibited as yet no symptoms of flagging under the work, but yet it could not be denied that the necessity existed for another Judge.* The hall of the Supreme Court is thus described by a local paper for the benefit of its readers at Home :—

**The Chief Justice.**

**The hall of the Supreme Court described.**

"Readers at a distance can imagine what we have to endure when we tell them that the upstairs room on the Queen's Road, honoured with the name of 'Supreme Court House,' has its ceiling about three feet above the tops of

* See Vol. II, Chap. XXXVII.

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the windows—windows at one end of the room only—the south, whence a breeze seldom comes, has two doorways, and two small punkahs, one over the Judge's seat and one over the Jurors', and in this room, in the sultry months of July, August, and September, we are expected to remain for seven or eight hours at a sitting, every inch of spare room behind the dock being filled with unwashed, steaming, Chinese, the pestiferous effluvium from whose presence would make a candle burn dim if the experiment were tried A juror in a weak state of health would prefer paying a hundred dollars fine than, with such sum for medical attendance, have the discomfort of a double physicking—physic in and physic out of Court."

With slight occasional improvements in connexion with the arrangements inside the hearing hall and the roof of the Court in spite of repeated complaints, things continue pretty well in the same state to this day.*

**Point of practice. Precedence of cases for hearing settled.**

At the commencement of the summary jurisdiction sittings on Friday, the 1st August, 1856, one of the suitors asked the Court why the case in which he was concerned had been placed at the bottom of the list and subsequent applicants been allowed precedence of him. The Registrar, Mr. Alexander, explained that it had been the custom to arrange the list according to the amount sued for, so that a suit for $500, though entered at the last moment, came on for trial first. The complainant said he thought such a course of proceeding very unfair—his time was equally valuable with that of other suitors, and yet he might be kept dancing attendance upon the Court, it might be the whole day. The Chief Justice told him he might go and that he would be sent for when his case was reached, which as it happened was not before seven o'clock in the evening. He was then informed by the Chief Justice that, after consideration, he had instructed the Registrar in future to enter all plaints in the list in the order of application, regardless of the amounts.

**The 'Buildings and Nuisances' Ordinance, No. 8 of 1856. Mr. Mitchell and the interpretation of the Ordinance.**

The new Buildings and Nuisances Ordinance [No. 8 of 1856] had caused a great deal of heart-burning in the community at the time of its promulgation,† especially amongst the Chinese. The Magistrates seemed at loggerheads as to its correct interpretation, and in a recent case the acting Chief Magistrate, Mr. Mitchell, finding the interpretation of the Ordinance difficult, if not beyond his powers, called to his assistance several of the non-official Justices, although the Attorney-General afterwards alleged that Mr. Mitchell was well aware of his (the Attorney-General's) opinion when he consulted the Justices. Four of these attended, and after mature consideration decided for the defendant

* On the subject of the Supreme Court House, *see antè* Chap. XI., p. 237, and references there given, and Chap. XVIII., *infrà*. Besides these references, see also in Vol. II.,

and against the complainant, the acting Surveyor-General, Captain Cowper, as plaintiff on behalf of the Crown, and consequently in direct opposition to the construction put upon the words by the Government, and the meaning which the framers of the Ordinance evidently intended it should, but which the Magistrates considered it did not, convey. The case was consequently dismissed, but upon a fresh complaint against the same party being brought by Captain Cowper, the Stipendiary Magistrates refused to issue the summonses on the ground that the case had been already decided.

Opposite construction given by the Justices to the opinion of the Attorney-General.

Dismissal of a Crown case.

The Magistrates refuse to issue summons on fresh complaint by Surveyor-General.

A mandamus, at the request of the Government, was thereupon applied for on the 15th August by the Attorney-General, and granted by the Chief Justice, to compel the Magistrates to do their duty, His Lordship at the same time expressing a view opposed to that of the Justices of the Peace, namely, that the Ordinance had a retrospective tendency. The Governor, expressing dissatisfaction at the course adopted by the Justices, which had compelled the Supreme Court to be moved as above stated, issued the following memorandum to the body of Justices in the Colony :—

Mandamus granted by Chief Justice who expresses views opposed to the Justices.

Governor's memorandum to the Justices.

MEMORANDUM.

In a Commission issued, on the 4th October, 1855, by His Excellency the Governor, thirteen gentlemen were nominated Justices of the Peace, they not being invested with other official authority. The number has been augmented by subsequent Commissions to fifteen in all.*

His Excellency has caused a return to be made of the number of attendances, at Petty Sessions since the time of the issuing these Commissions.

He finds that one gentleman has given six attendances, five gentlemen have given two attendances, and two gentlemen one attendance, while seven gentlemen have given no attendance since their appointment.

He has to remark that there have been only two occasions on which more than one Justice has assisted the Stipendiary Magistrates with their presence and advice.

On these two occasions four Justices attended, three of whom for the first time since they were sworn in. *They are stated to have been present at the special request of the Acting Chief Magistrate*—and on the first of these occasions (the 23rd May) there was as it appears *a unanimous concurrence in a decision by which, in the judgment of His Excellency, the obvious intent and meaning of the law were abrogated and annulled by the action of the Bench.*

On the 2nd June, invited again (as is officially reported) specially by the Acting Chief Magistrate, three of the Justices who had been present at the sitting of 23rd May, and another Justice who took his seat then for the first and only time in which he has ever acted, formed the Bench, and these Justices again *supported the Chief Magistrate in his determination not to give effect to the law.* His Excellency is informed that one of the Justices present—a member of the Legislative Council—distinctly pointed out to his colleagues the error which had been committed on the 23rd May and which

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had been the subject of reference to the Legislative Council. That gentleman, of course, dissented from *the conclusion by which a majority co-operated with the Chief Magistrate in his extraordinary course of proceeding.*

For the maintenance of that supreme authority of the law which, in the great interests of the whole community, every Government is bound to provide for, and of which all Justices of the Peace are expected to be instruments and auxiliaries, His Excellency directed an application for a mandamus against the Acting Chief Magistrate to be applied for to the Chief Justice in the Supreme Court of the Colony, which mandamus has been granted by His Honour, calling upon the Chief Magistrate to enforce the law. Its granting was accompanied, as His Excellency is informed, by a declaration from the Bench that "the magisterial decisions were against the law," and a prompt obedience was recommended to its requirements.

His Honour expressed a hope that there would be an immediate and satisfactory return to the mandamus, showing that there is no disposition to overturn the authority of the law, but rather to give effect to its provisions.

His Excellency concurring in that wish, and desirous of promoting that unity of purpose and of action, which should undoubtedly be the object of all who are invested with public authority for the maintenance of law and order, has directed this memorandum to be circulated among all the Justices of the Peace.

By Order of His Excellency the Governor,
with the concurrence of the Honourable
Members of the Executive Council.

(Signed) L. DE ALMADA E CASTRO,
*Clerk of Councils.*

Government Offices, Victoria, Hongkong,
19th August, 1856.

*Addressed to—*

The Honourable W. T. MERCER, Esq.;
The Honourable J. F. EDGER, Esq.;
CHARLES MAY, Esq.;
JOSEPH JARDINE, Esq.;
GEORGE LYALL, Esq.;
JOHN D. GIBB, Esq.;
CHARLES F. STILL, Esq.;
R. S. WALKER, Esq.;
JOHN RICKETT, Esq.;
Captain T. V. WATKINS, R.N.;
W. H. MITCHELL, Esq.;
R. C. ANTROBUS, Esq.;
T. C. LESLIE, Esq.;
ANGUS FLETCHER, Esq.;
A. C. MACLEAN, Esq.;
WILLIAM LAMOND, Esq.;
The Honourable T. C. ANSTEY, Esq.;
SAM. GRAY, Esq.;
JOHN SCARTH, Esq.

**The Justices protest against any interference with them in the discharge of their duties.**

This memorandum, of course, called forth an indignant denial from the four gentlemen, followed by a letter from their brother-Magistrates in which they rebutted the charges made against themselves and informed the Governor that they considered the language used by him in his memorandum towards

the acting Chief Magistrate and the Justices who acted with him as "tantamount to a charge of deliberate perversion of justice, and violation of their oaths of office,"—a charge they felt bound to inquire into; and the determination they had come to was, that the "allegations made by His Excellency had no foundation whatever," adding that, in the conduct of the Justices in question, they could perceive nothing but an anxious desire to assist the Stipendiary Magistrate "to render his decision as accurate and sound as possible." They further accused Sir John Bowring of unconstitutionally and unjustifiably attempting to interfere with, and dictate to, them in their judicial capacity, and emphatically protested against such conduct on his part. Of course, all this was denied by Sir John Bowring, who disclaimed any intention of acting in the way ascribed to him. This open rupture between the Justices and the Governor at any rate, if it had no other effect, had that of awakening the Justices to a sense of their duty from the apathy into which they had sunk.

**Ordinance No. 15 of 1856, amending the Law of Evidence and Trial by Jury.**

Ordinance No. 15 of 1856, amending the Law of Evidence and Trial by Jury, was passed on the 22nd August, 1856. The principal heads were—(1) The extension to this Colony of the Statute 18 and 19 Vict. c. 42 relating to oaths administered and notarial acts done by Diplomatic and Consular Agents; (2.) The admission in evidence, upon proof, of all instruments filed or recorded in a Foreign Court or Consulate; (3) The admission of depositions in cases where the witness is absent from the Colony or unable through illness to attend; (4) The abolition of oaths by heathen witnesses, unless the Court in its discretion orders them to be sworn; (5) Indictment for perjury may follow any conflicting statements on the part of witnesses, or immediate fine or imprisonment, at the discretion of the Court; and (6) The number of jurors summoned for each Sessions to be increased from ten to eighteen, so as to enable the Court to make up a second jury panel in case of necessity. It may be remarked if this Ordinance had been allowed, it would have done away with the farce of burning paper in relation to Chinese oaths* and probably led to the adoption of the only mode by which Chinese can be sworn. But the Ordinance was disallowed by Proclamation of the 23rd May, 1857.

**Act 18 and 19 Vict. c. 42**

**Ordinance disallowed.**

**The Police and gambling.**

**Police Constable Randolph charged**

At the Criminal Sessions held on the 25th August, a European Police Constable named Randolph was charged with extortion and demanding money with menaces from persons who, he alleged, were gambling. The accused in his defence said it was a well known fact, that "it was the usual practice

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1856.

His confession.

Mr. Anstey upon Police delinquencies.

by the Police for gambling."* The Attorney-General, in addressing the jury, said it seemed to him that every facility was afforded to the Police to roam about the Colony when off duty to plunder whom they pleased; they were permitted to go about in disguise, and all they had to do, when an opportunity offered, was to pull the Crown out of their pocket and say "I am a Constable"! thus effectually avoiding detection. And though attention had been drawn to this state of things in the case of Constable Brady, tried at the March Sessions,† on which occasion it had been recommended by him (the Attorney-General), and approved by His Lordship, that the number of each Police Constable should be *sewed* upon the breast or outside collar of his jacket in Chinese as well as in the English numeral, and that the crown should be *fixed* to the cap so as in case of complaint to render recognition certain, and though Mr. Grand-Pré, the Superintendent of Police, then promised something that should be done to remedy the evil, no steps had yet been taken for that purpose. The prisoner was sentenced to twelve months' hard labour.

The Attorney-General's suggestion about a Police Constable's number and cap 'crown' approved by the Chief Justice.

The libel case of Mitchell v. Anstey (Attorney-General).

At length, after many delays and numerous postponements, principally on the part of the plaintiff, the great and much talked about libel case of Mitchell *versus* Anstey came on for trial on Saturday, the 23rd August, before a special jury, the damages being laid at $5,000. After a seven hours' sitting the further hearing of the case was adjourned until after the Criminal Sessions. On Wednesday, the 27th, it was continued and resulted in a verdict for the defendant. Messrs. Day and Green were of counsel for Mr. Mitchell, with Mr. Parsons as his solicitor, Mr. G. Cooper Turner being solicitor for Mr. Anstey, the defendant.

Verdict for the defendant.

The facts.

The facts were shortly as follows. Mr. Anstey, in his endeavours to put down nuisances endangering the health of the town, had reason to believe that he had been thwarted by the Magistrates, who, on cases being brought before them for adjudication under the Ordinance, either dismissed the charges altogether, or let the offenders off with a mere reprimand.

On the occasion of the departure for Siam of the late Chief Magistrate, Mr. Hillier,‡ the Attorney-General, on his way to the steamer to bid Mr. Hillier good-bye, fell in with Mr. Grand-Pré, the Superintendent of Police, and inquired what was being done for the abatement of nuisances. The latter replied "that it was of no use taking cases before the Police Court, where they were invariably dismissed; and that he knew of

* See the case against Job Witchell, an Inspector of Police, tried before the Chief Justice, Sir John Carrington, in July, 1897, and the confession of the defendant after undergoing his sentence, Vol. II., Chap. XCLI.

† See *antè* Chap. XVI. § II., p. 381.

‡ See *antè* Chap. XVI. § II., p. 383.

two instances in which tenants of the Assistant Magistrate had been had up and fined by Mr Hillier and which in his absence had been re-heard by Mr. Mitchell, their landlord, the decisions reversed, and the fines rescinded." Mr. Anstey, in the full belief that the facts were as stated, reported the matter unofficially to Mr. Mercer, the Colonial Secretary, and he also questioned Mr. Grand-Pré, who repeated to him the story as told to the Attorney-General. Mr. Grand-Pré was then directed by Mr. Mercer to find the dates. Mr. Grand-Pré would seem to have laboured under a mistake with regard to the matter in question, for, some four days subsequently, he supplied the dates, and the allegations having been laid before the Governor, Mr. Mitchell was called upon for an explanation. He did not at the time reply to this demand further than by forwarding the depositions, which at once afforded proof that the allegations against him were untrue, inasmuch as the cases had been re-heard by Mr. Hillier himself, whose signature was attached to the decision rescinding the fine. This was, of course, perfectly satisfactory and conclusive as to the groundlessness of the charge brought against Mr. Mitchell. But in the meantime, Mr. Anstey, who was also a Justice of the Peace, having no confidence in the Stipendiary Magistrates, Messrs. Mitchell and May, had called upon Mr. Leslie, a brother J.P. (who, having taken umbrage at Mr. Anstey's conduct as a member of the Praya Commission, had been previously written to by Captain Cowper, at Mr. Anstey's request, inquiring whether he would consent to join Mr. Anstey in adjudicating certain cases under the Buildings and Nuisances Ordinance) to endeavour to make arrangements for a sitting at Messrs. Dent & Co.'s counting-house, or in the Attorney-General's office at the Court House; and, in explanation of his reasons for holding trials in such places, instead of at the Police Court, mentioned Mr. Grand-Pré's serious charge against the Assistant Magistrate as still pending, Mr. Anstey not having been informed to the contrary, until the day after the conversation between him and Mr. Leslie took place. Mr. Leslie next morning, in the belief that Mr. Grand-Pré's statement as repeated to him by the Attorney-General was true, mentioned the matter to a Mr. Hudson, a joint proprietor of the houses where the nuisances were alleged to have been committed, and he carried the tale to Mr. Mitchell, who called on Mr. Leslie the same day to hear the details. These were at once afforded him, and repeated by Mr. Leslie to Mr. Parsons, Mr. Mitchell's solicitor. Such is a short account of this strange affair as was laid before the Jury.

Mr. Anstey, having no confidence in the Stipendiary Magistrates, asked a Justice of the Peace to sit with him.

The plaintiff charged the defendant with having uttered a malicious slander, which, in default of an apology, demanded heavy damages. The latter replied that if slander it were, it

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Mr. Leslie was to be viewed in the light of an official communication from one Magistrate to another; and that he repeated Mr. Grand-Pré's statement believing at the time the same to be true, having up to the date of conversation received no intimation to the contrary. The defendant's speech was concluded in an abusive style, Sir William Molesworth's name and the conditions under which he received his appointment being introduced into the defence in a way and for a purpose that must have caused astonishment. The same being interesting is now reproduced. Mr. Anstey said :—

Mr. Anstey concludes his speech in an abusive style.

He mentions Sir Wm. Molesworth and the conditions of his appointment.

The speech.

"It was the first time in his life he had been charged with wilfully slandering his neighbour, the first time any charge had been laid against him in a Court of Justice, and though he that day wore the robes of his office, instead of appearing before them as the private citizen, the humble individual, Thomas-Chisholm Anstey, it was that not for himself did he so appear but for his office, for it was in the strict performance of the duty of that office he had given cause for his then standing in judgment. For the acceptance of the office entailing on him that position, however, he was alone to blame; three times had an opportunity been offered to him to decline it, but he had set them at naught. He then made some allusion to a deceased political friend, Sir William Molesworth,* with whom he had for years laboured in the work of putting down tyranny and misgovernment in Colonies, and by whom, on his accepting a place in the Councils of the Sovereign, he was first spoken to regarding taking an office such as that he now held. It was during his absence that he was gazetted to this office, and without his knowledge even. He here made some allusion to the capacity for government of the gentleman holding the reins of Government, hinting that not under such an one would he have accepted a subordinate appointment had he an option. But he came, and he gave himself, from the first, only six months to do that which would produce such an amount of opposition *that the place would be too hot for him*. However, one chief duty was done, only the day before he had completed a work,—one which had occupied much time. He requested the jury to bear in mind the position in which he stood—he feared lest he might say too much—but allowance should be made for his feeling of embarrassment—"every insinuation which others had had the baseness to make in that [the witness] box had had its effect"—but he had notified His Excellency the Governor that he would defend himself before a jury of his equals, and he would justify that promise. The offence with which he was charged was designated by the plaintiff's counsel malice in law. The Judge would tell the jury no such malice was proved. He was charged with malice in fact. How could that be? Before ever he knew Mr. Mitchell, or that person's antecedents—he knew that the table of Downing Street groaned with complaints of matters connected with business in this Colony in which *he* was concerned. He would admit that he came here with express malice in his heart against the imbecility of men in office. Let sophists distinguish between hatred of sin and love of the sinner—he could understand no such feeling. As long as the sinner was countenanced and supported, so long would sin be rampant and successful. It were vain to attempt to battle with corruption and incapacity unless that condemnation was recognized. It was not against Mr. Mitchell—it was against his office, and the way he administered it, he waged war. Well, that was what he felt, and though verdict followed verdict, though a continuation of such trials might impoverish him, though what might be taken from him went to fee pettifoggers, he would still go on until he had finally succeeded in obtaining his righteous ends..... It was of

no use to talk of law on this occasion. His reputation belonged more to another hemisphere than this, and if he did not speak of law it was because a full report of this case from the pen of the shorthand writer he had engaged would go across the seas by the mail of the 10th of the next month ....."

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As stated before, the jury found a verdict for the defendant, holding that the communication was a privileged one. Thus ended another of those scandalous matters which ought never to have been brought before the public, and which might have been stopped by Sir John Bowring, had he chosen to do so.

The jury finds the communication a privileged one.

Sir John Bowring's demeanour.

The picture of the Attorney-General of the Colony as a defendant in an action such as this; he, the head of the Bar, with an eye to the reversion of the Bench, the prosecutor for the Crown, the legal adviser of the Governor, a man whose position in the Colony ought to be second to none, socially and officially, and who ought to be characterized by that gravity, reserve, and coolness of judgment which the just performance of his duties requires, and which would keep him clear of all personal squabbles,—with the Governor looking on placidly at both litigants, both high officials of nearly equal importance,—is perhaps unique in all the scandals of modern government of the Colonies or of English Courts of Justice. In one respect, however, be it said at this stage, Mr. Anstey proved wrong, and that was in his estimation of the special jury of the Colony, by the affidavit which he had filed in the earlier part of this case* and which he must himself have felt, for he now received justice at their hands.

The picture of an Attorney-General, as defendant in an action for libel.

Unique in all scandals of the Government of the Colonies.

Mr. Anstey's estimation of the special jury.

On the 16th October, *The (London) Morning Advertiser* contained a long, inspired article upon the result of Mr. Anstey's prosecution of Mr. Mitchell, which was justly considered as a mean, spiteful, and unjustifiable attack upon the Chief Justice and others of the community generally, including the special jury, while Mr. Anstey was praised for "battling with the abuses which were everywhere rife around him," and the "almost universal conspiracy to crush him, who had ventured, in that paltry arena, to defy corruption and to maintain truth." As is seen above, at the conclusion of his speech, Mr. Anstey had said that he would send Home "a full report of this case," so that if this article was not actually written by him, the person to whom he supplied the facts must have done so, for a paragraph in Mr. Anstey's letter to his friend was reproduced in the article, although the editor alleged that the letter was only sent to him for perusal. The following was the passage:—

*The (London) Morning Advertiser* upon the result of Mr. Anstey's case against Mr. Mitchell.

A mean attack.

Mr. Anstey suspected.

"If I am carried there in a sedan—if I am obliged to go in blankets—if I breathe my last in that Court—go I will in person, and, with my dying voice, testify against the villainy and rascality in high places, which makes Hongkong what it is—*the noisome scandal of the East.*" †

Hongkong 'the noisome scandal of the East.'

* *Antè* Chap. XVI. § II., p. 392.

† Upon this subject, see Mr. Austey's letter to the Secretary of State, dated the 7th

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1856.

Local valedictory opinion of the Chief Justice.

Of the Chief Justice, it was remarked locally, there was not a man in the Colony, except Mr. Anstey perhaps, "who did not esteem and respect him as a worthy, honourable Government servant—with a good nature and temperament that neither long sickness nor the impertinence of vulgar, ignorant men could ruffle for a moment." This was as shabby and unwarranted an attack as might well be conceived. Whether Mr. Anstey was called to account for it or for explanation regarding the meaning of the term "villainy and rascality in high places which makes Hongkong the noisome scandal of the East" is not shown; but, doubtless, it was considered best to leave things alone.

Mr. Anstey goes to Shanghai.

The Royal Asiatic Society.

Paper by Mr. Anstey tion and value of judicial oaths amongst the Chinese."

Evidently feeling the want of a change after all his recent "trying work," Mr. Anstey left Hongkong on the 30th August on a short trip to Shanghai, and in his absence at a meeting of the China Branch of the Royal Asiatic Society, held at the Society's rooms in the Court House, at 9 p.m., on Wednesday evening, the 3rd September, Sir John Bowring in the chair, the Secretary read a paper by Mr. Anstey "*On the administration and value of judicial oaths amongst the Chinese.*"* The paper gave rise to some discussion, the thanks of the Society being voted to its author. Mr. Anstey had previously been elected a resident member of the Society on the 19th March.

Differences between the Governor and the Justices of the Peace.

Public meeting.

Ordinance No. 8 of 1856.

Ordinance No. 14 of 1856, sec. 12.

The publication in future of every draft of Ordinance.

Meetings of the

The differences between the Governor and the unpaid Justices† had not yet come to an end, and a public meeting, convened by the Sheriff according to advertizement, was held on the 16th October "for the purpose of taking into consideration several points in the recently-passed Ordinances seriously affecting the interests of the Colony," especially the Ordinance, No. 8 of 1856, entitled "an Ordinance for Buildings and Nuisances." Recent correspondence between the Government and the Justices relative to the same matter was taken into consideration. Resolutions were also adopted in reference to section 12 of Ordinance No. 14 of 1856, entituled "An Ordinance for Fees and Costs,"‡ and the publication in future of every draft of Ordinance at least three months before becoming law, and that meetings of the Legislative Council be held with open doors. The Police also

* This paper is not now procurable in Hongkong, but in June, 1868, long after he had left the Colony, Mr. Anstey read, before the Judicial Society in London, a most interesting paper upon the subject of '*Judicial oaths as administered to heathen witnesses,*' which is supposed to have been an enlarged reproduction of the paper he had previously read in Hongkong. This subject will be found further dealt with in Vol. II. of this work Chap. L. On the question of oaths to native witnesses, see *antè* Chap. XII. § II., pp. 309-315, and references there given.

† *Antè* pp. 399, 400.

‡ The following was the section in question:—"12. Costs of procedure shall be recoverable by or on behalf of the Crown upon every judgment or decree at Law, in Equity, or in the Admiralty or Ecclesiastical Jurisdiction of the Supreme Court, whereby any real or personal estate or any forfeiture or money penalty shall have been adjudged to belong or awarded to the Crown."—This obnoxious section was repealed on the 5th March, 1857, by Ordinance No. 4 of 1857.

came under discussion, the Chinese present complaining "that it was worse now than ever it was, particularly in the day time; people were robbed continually in broad daylight. The Indian section of the Force treated them with much cruelty, whilst at night they were either asleep on their beat, in brothels or in taverns—there appeared to be no one to look after them and they did just as they liked." These resolutions were forwarded to the Government, and on the 4th November, the Government acknowledged receipt of the same. After going into the different questions discussed at the meeting and promising early consideration and reform, the Governor concluded by saying that he considered the complaints against the Police well founded as they were noticed in the report recently handed in of the Police Commission,* and that he hoped in due time an improved Force would be organized.

Legislative Council to be held with open doors.

The Police.

The Chinese complaint against Indian Police.

Governor considers the complaints against the Police well founded.

The Sunday labour question again came under public notice.† On the 16th October, the following Government Notification appeared upon the subject :—

Sunday desecration.

Government Notification.

"Whereas it has been represented to His Excellency the Governor that certain Government works are conducted on Sundays, His Excellency has instructed the responsible authorities to take such measures as shall prevent the desecration of that day in such respect; and as regards works carried on by private persons, His Excellency recommends to all Christian inhabitants, that the contracts with the natives shall be such as may prevent the employment of workmen or labourers on the Sabbath day."

Mr. David Jardine, a member of the Legislative Council, died‡ in Dumfriesshire, Scotland, on the 22nd October, at the age of thirty-six.

Death of Mr. Jardine, M.L.C.

Mr. Henry Tudor Davies, who had been appointed Chief Magistrate in succession to Mr. Hillier,§ after some months' delay, arrived in the Colony on the 8th November. He was a barrister-at-law, of the Home Circuit, and had been called to the Bar by the Inner Temple on the 19th November, 1841. As may be readily imagined with the state of affairs in the Colony, his arrival had been eagerly looked forward to for some time. Messrs. Mitchell and May had given little or no satisfaction as Magistrates, and they now reverted to their own appointments. In welcoming him a local paper told Mr. Davies that he had come at a time when "the Governor and the governed were all at 'sixes and sevens;' that he would have a good deal of colonial legislation to read up, and that he would find it a very different description of legislation to that which was current in England at the date of his departure."

Arrival of Mr. Davies, Chief Magistrate.

State of affairs in the Colony.

Messrs. Mitchell and May as Magistrates.

'The Governor and the governed at sixes and sevens.'

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1856.

**Mr. Caldwell taken into the service again.**

Mr. Caldwell, who had resigned his position under the Government as recorded in July, last year,* had by this time well nigh succeeded in making himself indispensable,† although there could be no doubt that in his capacity of general interpreter, quite apart from his intimate knowledge of the Chinese manners and customs, he had proved an acquisition on many occasions. After much agitation, in which the Chief Justice himself had taken part,‡ the Government decided to re-engage him, and on the 15th November appeared a Government Notification "that the Governor had been pleased to appoint Mr. Caldwell, Registrar-General and Protector of Chinese, as well as General Interpreter to the Government, pending the pleasure of Her Majesty's Government." On the 28th November, Mr. Caldwell took the oaths of office, being also sworn in as a Justice of the Peace. A Government Notification of the 21st May, 1857, announcing that he had been confirmed in the various offices to which he had been appointed.

**He is appointed Registrar-General and Protector of Chinese, General Interpreter, and a Justice of the Peace.**

**What Mr. Caldwell's re-employment afterwards proved to the Government.**

It will be seen later on what the re-employment of Mr. Caldwell meant to the local Government, taken in the light of such re-engagements under ordinary or similar circumstances, and the trouble it brought upon the Government eventually, chiefly through the efforts of Mr. Anstey.

**Mr. Anstey returns from Shanghai.**

On his return from Shanghai, Mr. Anstey again set to work as vigorously as ever, devoting himself almost entirely to the practical working of the 'Buildings and Nuisances Ordinance,' No. 8 of 1856, which, as before stated, had given so much dissatisfaction § In the course of a few days not less than forty-four persons were summoned before Mr. Davies, the new Chief Magistrate, for infringement of its enactments. The Attorney-General, placing himself almost in the position of an informer, walked round the Chinese portion of the town, and required the Police to issue summonses against those whom he pointed out.

**Ordinance No. 8 of 1856.**

**Forty-four persons summoned.**

**Mr. Anstey as a Police informer.**

**He sits by the Magistrate.**

At the hearing, he sat by the Magistrate, and, whether due to his presence or influence, Mr. Davies proceeded to inflict heavy fines against the Chinese offenders, those unable to pay being sent to prison. On these facts coming to the knowledge of the more respectable Chinese inhabitants, they proceeded to make a 'demonstration.' They called a meeting on the afternoon of the 20th November, and although those who were more intimately conversant with the English mode of seeking redress under such circumstances tried to persuade them simply to petition the Government, others and the larger body said that, pending an inquiry into matters, they would shut up their

**Heavy fines and committal to prison.**

**Demonstration by the Chinese.**

* See Chap. XVI. § I., *antè* p. 361.
† See *antè* Chap. XVI. § II., p. 371.
‡ *Antè* Chap. XVI. § II., p. 381.
§ See *antè* p. 398.

shops. This was done the following morning when, it is said, "not an egg nor a fowl could be procured from the Bazaars." A few of the shopkeepers, more immediately connected with the foreign residents, kept theirs open, but a mob compelled their closure. The Police Force was now reinforced by a detachment of the 59th Regiment. On Lieutenant-Colonel Caine, the Lieutenant-Governor, appearing in the streets, he had some harsh words thrown at him. Detachments of the 59th were at night placed on guard at the Bank, at the P. & O. Co.'s office, and in Gough Street, and strong bodies of Police patrolled the streets throughout the night. In the afternoon, the Government issued the subjoined proclamation which was published for general information the next day, the 22nd November.

Police reinforced by military.

Government Proclamation.

PROCLAMATION.

W. Caine.

By the Honourable Lieutenant-Colonel William Caine, Lieutenant-Governor, Administering the Government of Hongkong.

In order that lawless meetings may be suppressed, and confidence restored to the well-disposed Chinese inhabitants of the Colony,—

It is hereby notified to the residents of this Colony, that Her Majesty's Government, having reason to believe that the large influx of suspicious characters from the Chinese mainland which has taken place during the last few weeks, and the seditions and treasonable demonstrations of this date in the streets of this City, have been occasioned by the direct agency of secret emissaries from the persons carrying on a lawless war against Her Majesty's Forces in the neighbouring Province of Kwang-tung,—it is the determination of Her Majesty's Government within this Colony to take instant measures for putting in force the provisions of the Registration Ordinance No. 7 of 1846; and so soon as the said Ordinance shall be brought into full operation, all unregistered Chinese will be required to depart from the Colony.

Whilst the Colonial Authorities are always ready on proper occasions to hear the complaints of Her Majesty's Chinese subjects, and, if well founded, to redress them, it is nevertheless further notified, that no complaints whatever will be attended to, so long as they are urged in an improper manner.

The Lieutenant-Governor will willingly receive and give every attention to any representation of grievances that may be laid before him.

Her Majesty's Government, therefore, require Her Majesty's said subjects to abstain from all part in the aforesaid demonstrations, to return to their several duties, and to re-open their shops.

Tumultuous movements taking place after publication of this proclamation will be immediately suppressed by the Military Authorities.

By Order,

W. T. Mercer,
*Colonial Secretary.*

God Save the Queen.

Given at Victoria, Hongkong,
the 21st day of November, 1856.

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That these demonstrations "had been occasioned by the *direct agency of secret emissaries carrying on a lawless war* against Her Majesty's Forces in the neighbouring Province of Kwangtung" was held to be a perversion of language, if not of facts, though possibly the hostilities that were then being carried on by us with China may have indirectly increased the feeling of the Chinese against the local authorities.

The Proclamation a perversion of language.

Feeling of Chinese against local authorities.

List of grievances formulated.

The following was the list of grievances that the Chinese inhabitants formulated :—

1. That the fines imposed under the Nuisances Ordinance are too severe, and beg that the same may be recalled.

2. That in the harbour of this Colony rebels have taken possession of many Chinese passage boats, and that the passengers have suffered much harm therefrom, and no stop has been put thereto.

3. That the Police in the streets in arresting persons do not discriminate. Real thieves may be struck and beaten, but not others.

4. That when goods are being landed near to wharves, and when they cannot in a moment be removed into shops and godowns, time should be allowed to do so, obstruction to the road not being made.

5. That the fines lately imposed upon the poor people be refunded, in order that they may not be laid under suffering.

6. That the street hawkers are poor people, and that they have licensed permission to sell their wares; that if they obstruct the roads and streets they may be driven away, but that baskets should not be upset, their wares destroyed, and themselves driven to starvation.

7. That there are parties in this Colony pretending to be owners of lost goods who make accusations against hong and shop-keepers,—that this should be clearly looked into, and that the guilty parties should be arrested.

End of "Anstey Riot."

The Governor notifies to the Chinese Mr. Caldwell's appointment as Registrar-General and Protector of Chinese.

The large powers given to Mr. Caldwell.

And with this may be said to have ended what was called the "Anstey Riot." Consequent upon these disturbances, and as an easy mode of settling them as speedily as possible, a notice was at once addressed to the Chinese inhabitants on the subject of Mr. Caldwell's appointment as Registrar-General and of the necessity for a system of registration. The following is a copy of the translation of the notice which was published in *The Government Gazette* of the 4th December. The reader will observe the large powers thus given to Mr. Caldwell, and to what advantage he turned them afterwards will hereafter be seen.

CALDWELL, [Official Title, &c., &c.].

"Whereas His Excellency the Governor of this Colony has been pleased to appoint Mr. Caldwell, Registrar-General and Protector of Chinese residing in Hongkong, this is to give notice to the Chinese community that in all cases in which they have difficulty in understanding the law as here administered, or conceive themselves to have wrongs for which they are otherwise unable to obtain redress, they are at liberty to apply, between the hours of ten and four, at Mr. Caldwell's office, next to the Police Station, or in cases of special emergency at his house in Gough Street.

And whereas it is expedient for the protection of the good citizen that vagrancy should be as much as possible brought under restraint, it is at the same time desirable that any system of registration having that object in view should be so contrived as to attain it with the least possible inconvenience to those whom it is intended to benefit. No levy of charge or fee is contemplated, and the respectable inhabitants of the City are invited at their earliest convenience to depute members of the community, either to wait on Mr. Caldwell and state what they may have to say in person, or to submit to him in writing such details and suggestions as may enable him, with the aid of his own experience, to devise a system which shall work effectively, but, at the same time, without undue restriction or annoyance."

Arrival of Mr. Hickson, the first Crown Solicitor. He is also gazetted as Deputy Sheriff, Coroner, and Queen's Proctor. Mr. Gaskell relinquishes Queen's Proctorship.

On the 1st December, 1856, Mr. J. J. Hickson arrived in the Colony as Crown Solicitor, "by virtue of a warrant under the Royal signet and sign manual." On the same day he was also gazetted as Deputy Sheriff, Coroner, and Queen's Proctor in Admiralty. Mr. Hickson's appointment, quite unexpected as it was by the public and the profession, though undoubtedly it must have emanated upon the recommendation of Mr. Anstey, whose friend and protégé Mr. Hickson was reputed to be, caused a great deal of acrimony as regards Mr. William Gaskell, who had held the office of Queen's Proctor since the 24th July, 1850,* and who had now to relinquish the post. Not to the astonishment of any one, however, acquainted with the cost of living in this Colony, and which matter had been commented upon in the local press at the time of his arrival, did the public learn by Government Notification on the 6th February, 1857, that Mr. Hickson had resigned his appointment, the principal reason given for this step was the total inadequacy of the salary allowed him, £285 a year—an amount wholly disproportionate to the arduous duties he had to perform, and even to his support, in this Colony.

Resignation of Mr. Hickson.

Mr. Cooper Turner appointed Crown Solicitor. Mr. May, Coroner and Deputy Sheriff.

On his resignation, Mr. Hickson returned to England "at his own expense," and Mr. G. Cooper Turner, who had been of great help to Mr. Anstey on various occasions, especially as his attorney in the cases between himself and Mr. Mitchell,† was appointed Crown Solicitor, while Mr. May was appointed Coroner, "and as Deputy Sheriff, on the nomination of the Sheriff, to have charge of the Victoria Gaol."

Royal Asiatic Society. Mr. Anstey's paper. "Did Alexander the Great in the course of his conquests ever reach any part of the Chinese

At a meeting of the Royal Asiatic Society on Wednesday evening, the 10th December, Sir John Bowring in the chair, the Attorney-General read a very interesting paper in reply to the question, "*Did Alexander the Great in the course of his conquests ever reach any part of the Chinese Empire?*" The thanks of the Society were voted to the author.

On the 12th December a free pardon was granted to Wong Ashing, who had been convicted of piracy in October last and then sentenced to transportation for life.

Ch. XVII § I. 1856.

On the 16th December notice was given to the Chinese upon the subject of lanterns and night passes and the penalties in default.

Free pardon to Wong Ashing convicted of piracy.

Lanterns and night passes.

In view of further contemplated disturbances, *The Government Gazette* of the 23rd December contained an intimation of an increase to the Police Force of twenty Europeans and fifty Indians, and that an auxiliary force of forty Europeans, consisting of imprisoned seamen, was held in reserve for cases of emergency and that the latter were drilled and allowed pay for consenting to do so. And as further showing the state of affairs, if not of mind, then prevailing in the Colony, it was deemed advisable to organize a special Constabulary Force, and by special invitation some forty or fifty residents assembled at the Chief Magistrate's office on the 30th December, for the purpose of voluntary enrolment.

Increase to Police Force.

Auxiliary force of European seamen prisoners.

Special Constabulary Force.

Meeting at the Chief Magistrate's office.

The Attorney-General and the form of oath taking by Special Constables.

Voluntary enrolment.

Further increase to European Police Force.

Mr. Davies explained that the Attorney-General was of opinion the oath taken by Special Constables in England could not be legally administered to the body proposed to be enrolled in Hongkong, and that therefore he had drawn up a form of obligation which he thought might answer every purpose intended. After some discussion the meeting dissolved, and on the 2nd January, 1857, the Governor informed the community that as his desire to create a special constabulary by voluntary enrolment had not been generally responded to, he had, with the advice of the Executive Council, decided to increase still further the European Police Force.

Ch. XVII § II. 1857.

Consequent upon the insecurity felt by the community generally, owing to the hostilities then being waged with China and the disturbances that had already taken place in Hongkong, on the 6th January, Ordinance No. 2 of 1857 "for better securing the Peace of the Colony," providing for night passes and giving general powers of arrest and deportation, was passed. On the same day it was notified "that during the present state of affairs within the Colony, the services of Mr. May, Superintendent of Police, would be given solely to the Police Department, and that for the conduct of his magisterial duties, satisfactory arrangements had been made by the willing co-operation of Mr. Bridges and the other gentlemen in the Commission of the Peace." It may here be said that Mr. Bridges, who had returned to the Colony in the latter part of last year, had, during his stay in England, had conferred upon him the honorary degree of D. C. L.,* and was now known as 'Dr.' Bridges.

Insecurity felt by the community.

Ordinance No. 2 of 1857.

Services of Mr. May given solely to the Police.

His magisterial duties how performed.

Honorary Degree of D.C.L. conferred on Mr. Bridges.

A Government Notification of the 9th January required "all persons who had no employment or who could not find security for their good behaviour to depart from the Colony, on penalty of apprehension and punishment of deportation."

1857. Government Notification regarding persons out of employment.

On the 13th January, three military officers were gazetted Justices of the Peace, including Colonel Dunlop, the officer commanding the troops.* These officers remained on the Commission of the Peace until the 5th May, 1857, when the Government, considering there was no longer any necessity for retaining their services, withdrew their names from the list, the Governor-in-Council conveying his thanks to them for the services they had rendered "during a time of anxiety and danger." Although Colonel Dunlop accepted the thanks tendered him, the other two officers did not, and one of them wrote an indignant letter to the Governor on the gratuitous insult which he considered had been offered him by his being so summarily 'dismissed,'—doubtless prompted by the action of the local press which had taken an unfavourable view of the action of the Government under the circumstances.

Military officers gazetted Justices of the Peace.

The military officers withdrawn from the Commission of the Peace.

The thanks of the Government.

The indignant letter of one of the officers.

At a meeting of the Royal Asiatic Society held on the 17th January, Sir John Bowring being in the chair, the Honourable T. C. Anstey was unanimously elected Vice-President.

Mr. Anstey elected Vice-President of the Royal Asiatic Society.

A case which attracted some attention in consequence of the Attorney-General acting the part of a Police Constable, was heard in the Police Court on the 23rd January, before Dr. Bridges and Mr. Lamont, Justices of the Peace. The case was described as showing the "meddling, irascible, undignified, and ungentlemanly conduct of the Attorney-General." It was against Mr. Roza, a Portuguese gentleman and householder, who had been given into custody by the Attorney-General the night before, and who had in consequence been locked up the whole night, for "obstructing the capture of two chair coolies without passes." Mr. Anstey prosecuted in person, and the following was his evidence on oath, by which it will be seen that the comments passed upon his conduct were by no means too severe :—

Mr. Anstey acts the part of a Police Constable.

He gives a Portuguese gentleman into custody and prosecutes him for alleged obstruction.

His evidence.

"In consequence of information which I received of the probability of the City being attacked, or of serious disturbances arising, and knowing that Mr. May with his present Force was unable to carry out the provisions of the late Ordinance for the protection of the City before ten o'clock at night, I thought it my duty as a Justice of the Peace to render my personal assistance. In pursuance of this resolution, I was walking down a street leading from Lyndhurst Terrace to the Police Station, at about a quarter to nine o'clock on Thursday night, when I saw two coolies in the middle of the road. I asked them for their passes. They said they had none. I then arrested them to take them to the Police Station, on which a person, I believe the de-

* *Antè* Chap. XVI. § II., p. 385.

Ch. XVII § II. 1857.

fendant, came up to me and asked what I meant by arresting his chair coolies. I said, 'Have you a pass for them?' At first he said he had, and began to feel in his pocket for the pass; then he said he had a pass in his house; finally, no pass was produced. I, then, seeing that a number of suspicious characters were gathering round, began moving towards the Police office with the coolies. Defendant then came in front of me and barred my way, and asked what I meant by arresting the servants of a Portuguese gentleman. Fearing that the men would escape, I pushed him aside, and a policeman coming up took defendant into custody. He was very violent both when speaking to me, and afterwards before Inspector Jarman. He used no bad language, but was very disrespectful, addressing me as 'my good fellow,' and 'my good man.' In reply to a question by Dr. Bridges, witness said he believed there was a chair standing in the neighbourhood of the coolies; they were standing in the middle of the road."

**The case is dismissed.**

Naturally upon such evidence, the Magistrates could do nothing but dismiss the case, and in dismissing it, Dr. Bridges, after consulting with his brother-Magistrate, said :—

"It is true that no Chinese should be out, for however short a time, at large without a lantern, after eight o'clock, but in our opinion it is stretching the law to a most unnecessary extent to arrest a gentleman's chair coolies when engaged in carrying him. In this case, where the gentleman's residence was so near, the arresting even the coolies, much more so the gentleman himself, was an unnecessary piece of severity, as the master could have been easily summoned as responsible for his servants. This is a case which, we think, ought never to have been brought before this Court, and we dismiss it."

**An unnecessary piece of severity.**

**Strictures upon Mr. Anstey**

Imagine the astonishment, if not disgust, with which the Attorney-General must have heard this decision, and the Magistrates deigning to lay down the law contrary to his ideas upon the subject. Naturally strictures lay thick upon Mr. Anstey in consequence of this case and his descending from his position to assist Mr. May as an amateur constable to pick up dirty Chinese in the streets,—a very dignified office truly!

**An amateur constable.**

**Cheong Ahlum.**

**Atrocious attempt to poison the foreign residents of Hongkong.**

**The 'Esing' firm.**

**Cheong Ahlum's departure for Macao**

An atrocious attempt was made on the morning of the 15th January to poison the foreign residents in Hongkong by means of arsenic in the bread issued from the principal bakery in the Colony. The firm was known by the title of 'Esing,' the proprietor being a well-known compradore named Cheong Ahlum, long resident in Hongkong. The circumstance of Cheong Ahlum having settled many of his outstanding accounts the day before, and taken his departure for Macao with his family the morning before his customers' breakfast hour, when discovery, and his consequent apprehension would have been certain, afforded strong reasons for believing that the act was performed with his cognizance and sanction, if not by his express orders.

The Government at once despatched the steamer *Queen* to Macao in search of him, offering at the same time a reward of $1,000 for his apprehension and also $1,000 for the apprehension of one Atsoi who was said to have absconded in like manner. Cheong Ahlum was delivered over by the Macao authorities to the Police officers sent after him, and he was brought back the next day in the *Shamrock*. There was naturally great excitement in the Colony, but the atrocious attempt fortunately failed in every case, and although two or three hundred people must have partaken of the poisoned bread, no lives were lost. Many suffered severely, none more so than the family of Sir John Bowring, Lady Bowring* more particularly. A careful analysis of the bread by the medical men showed that the poison was arsenic in the proportion of a drachm to each pound of bread; according to which about 10 lbs. of arsenic must have been distributed throughout the batch.

His arrest.

The sufferers.

On the 21st January, the preliminary investigation took place at the Central Police Station, when Cheong Ahlum, his father, and eight others underwent their first examination. Mr. Thomas Wade assisted Mr. Mercer, the Colonial Secretary, and Mr. May, the Superintendent of Police, who, as Justices of the Peace, conducted the inquiry at the request of the Governor, and eventually Cheong Ahlum and the nine others were committed to take their trial at the Criminal Sessions on Monday, the 2nd February.

The preliminary investigation at the Central Police Station.

The Justices who conducted the inquiry.

Cheong Ahlum and others committed for trial.

On the 28th January, an application was made to the Supreme Court by Dr. Bridges, Cheong Ahlum's counsel, that the money seized on Cheong Ahlum's premises be given up to pay for his defence.

Dr. Bridges, Cheong Ahlum's counsel, moves the Court that money found on Cheong Ahlum's premises be given up to pay for his defence.

The Attorney-General, backed by the affidavit of two of Cheong Ahlum's creditors, resisted the application, stating that he did so to prevent the money being plundered or squandered in his defence. Dr. Bridges seemed to think the Attorney-General was using strong language. The Attorney-General said he did not object to the bill for Cheong Ahlum's defence being paid out of the money, after it was laid before, and approved of, by the Court. The Chief Justice sustained the Attorney-General. It may be mentioned that originally forty-two other persons were arrested in connexion with this case, but were not put on their trial, being detained till the result of the case against Cheong Ahlum was known.

Attorney-General objects.

The Criminal Sessions commenced on the 2nd February and closed on the 5th. Of course the case involving the greatest interest was that of Cheong Ahlum and others previously mentioned, the charge selected and proceeded with being that of

Trial of Cheong Ahlum and others.

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"administering poison with intent to kill and murder James Carroll Demspter, Colonial Surgeon," he being one of the victims. The proceedings commenced at noon on the 2nd February, before a crowded Court. The Attorney-General prosecuted, instructed by Mr. Hickson, Crown Solicitor, assisted by Mr. G. Cooper Turner, and the prisoners were defended by Dr. Bridges and Mr. Day, instructed by Messrs. Gaskell and Brown, and Mr. Tarrant, solicitors.

**The Attorney-General denounces Dr. Bridges for violating professional etiquette.**

The Attorney-General commenced by denouncing Dr. Bridges for having violated professional etiquette in seeing his clients in Gaol and taking instructions and an order for money from them without the intervention of an attorney. He called "for His Lordship's deliberate opinion upon such conduct."

Dr. Bridges admitted seeing his clients in Gaol as stated, but added that, before leaving the Colony, matters were so badly conducted, that he had often visited prisoners without any notice being taken of it. He acknowledged that he was wrong and had departed from the usual line of professional etiquette, and would throw himself upon the mercy of the Court and submit to its censure.

**The Chief Justice's ruling.**

The Chief Justice remarked he did not wish to censure Dr. Bridges, but only to impress upon him the very great impropriety of repeating such visits; and His Lordship hoped that

**Barristers to receive their fees through their attorneys.**

barristers for the future would obtain their information and receive their fees through their attorneys.*

**The evidence in the case.**

As regarded the evidence, that against nine of the prisoners was very slight, amounting solely to their connexion with the 'Esing' bakery. That poison had been largely administered, was certain; but there was no link in the chain of evidence to connect Cheong Ahlum with the deed of putting it into the bread. The purchase or possession of poison was not even brought home to him. For aught that appeared, the foremen were the guilty parties, and might have been bribed either by the enemies of the Europeans, with a view to effect their destruction, or by some personal rival or foe of Cheong Ahlum, to ruin him by the imputation of such a design. It was proved, indeed, that he had been on the premises on the day and about the hour that the dough was mixed, but he was taken there against his will by the witness who proved the fact. Then, as to motive; on the one hand, Cheong Ahlum carried on a profitable trade under British auspices and protection; while, on the other hand, it was alleged that through this very circumstance he had incurred the displeasure of the Chinese Government, and would have lost his head if he had not given some signal proof of being no friend to the "barbarians." Then, he absconded, which at first looked bad

* On this subject, see also *antè* Chap. XVI. § II., pp. 371-374.

enough; but it was proved that he was only accompanying his family to Macao, with the intention of sending them into the country and himself returning immediately, having just purchased a quantity of flour, and entered into engagements with Her Majesty's Commissariat and other parties for supplying biscuit in large quantities. Of course, these business arrangements might have been a stratagem to cover his intended flight. It was also alleged in evidence that he gave his own children part of the bread on board the steamer, and that they were sick. Others suggested that the bread they had eaten was different, and that their indisposition was mere sea-sickness, or at best their father had only doled out to them a safe portion, and that this, also, was done with an object, bread being a very unusual article of diet with the Chinese.

The Attorney-General upon the case.

The Attorney-General evidently knew that the proof was inadequate; and he urged that in such a case "there should be allowed a greater latitude in accepting circumstantial evidence, and the mercy of the law should be restrained, not relaxed;" indeed, he thought the prisoners should have been dealt with summarily, that their crime deserved the fate of a drumhead court-martial. He regretted they had been brought before a jury at all; but since this had been done, he was bound to tell that jury that they must acquit the prisoners if they felt any reasonable doubt of their guilt; adding, that it would not be their duty to stretch the points set up for their defence to too great a length. In fine, he felt sure that if they were acquitted, the Chinese would regard the British authorities with contempt. That is to say "We have rather hastily apprehended these men; we found no evidence that would have justified a Magistrate to commit them, so we managed to waive that process; and now that we have rather forced a trial, you must give us a conviction to save our character. Better to hang the wrong men than confess that British sagacity and activity have failed to discover the real criminals."

'Better to hang the wrong men than confess that British sagacity and activity have failed to discover the real criminals.'

Dr. Bridges' argument.

Dr. Bridges observed strongly against the manner in which the Crown had conducted the case and against the committing justices.

The Attorney-General replied in a very able speech. The first part was employed in defending the Government and Mr. Mercer for the harsh course asserted to have been pursued in the case, Mr. Anstey stating that Dr. Bridges' observations as to the examination taking place at the "police station" was merely paltry claptrap. He boldly professed that he had not the usual indifference of Crown prosecutors in ordinary cases; this was an extraordinary case in which he felt in a different manner and was most anxious that a verdict of guilty should be given.

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Dr. Bridges and his friend, Mr. Mercer.

Dr. Bridges, in reply to what had fallen from the Attorney-General as to himself, said "that he had never attacked Mr. Mercer. Mr. Mercer was one of his best friends and he would rather that his tongue should drop out of his mouth than attack Mr. Mercer in the way it was asserted he had done." *

Verdict of not guilty.

The trial was concluded on the 5th February, and resulted in a verdict of not guilty by a majority of five to one.

The Chief Justice's summing up.

'Hanging the wrong man will not further the ends of justice.'

The Chief Justice acquiesces in the verdict of the jury.

The Chief Justice summed up against Cheong Ahlum as an accessory before the fact, and said that "if the jury thought Ahlum had mixed the poison, or ordered it to be mixed, or had any knowledge about it, they must find him guilty." Also, that if they were of opinion that it was false that his family were sick, it would be *primâ facie* proof of his guilt; but if, on the contrary, they thought they had been poisoned, there would be a *primâ facie* reason for believing him innocent, and in conclusion, Mr. Hulme said: "I, in common with the Attorney-General, am desirous that justice should be done on the perpetrator of this crime, but hanging the wrong man will not further the ends of justice." The Chief Justice saw the defect in the evidence and acquiesced in the verdict of the jury. There was one consolatory point of view in this bad business, and that was that it showed the Chinese that the English were not bloodthirsty and that an English jury will do what it believes to be its duty, even although that duty may run counter not only to outside prejudice but often even to the opinion of the Judge on the Bench.

The honour of the British name.

One notable fact to be recorded to the honour of the British name, in connexion with this case is that the prisoners were not only tried at the place where their crime was committed, but tried by a judge who had himself suffered from that crime, assisted by a jury all equally victims of the atrocious attempt, and they were further prosecuted by an Attorney-General and defended by lawyers also sufferers from their crime.

After discharge the prisoners are re-apprehended as suspicious characters.

Ordinance No. 2 of 1857.

On leaving the Court after being discharged, the prisoners were re-apprehended as suspicious characters under the provisions of the recent Ordinance No. 2 of 1857 "for better securing the Peace of the Colony," under a warrant issued by order of the Governor, Sir John Bowring. The Attorney-General doubted the legality of this detention, but Sir John Bowring was "confident that the legal advisers of Her Majesty's Government at Home would bear him out in his construction of the terms of the deportation Ordinance;" and therefore undertook to keep them in custody till he should receive instructions from England.

* That there was some truth in this statement may be seen by the way in which Mr. Mercer supported Dr. Bridges afterwards through good or evil report, and it was perhaps impolitic on the part of Dr. Bridges to have expressed himself thus so openly on the subject. See this matter referred to further on, Chap. XVIII, infra.

On the 7th February the Chinese held a meeting and resolved to petition the Governor "to compel the voluntary banishment of Cheong Ahlum's servants and to allow Cheong Ahlum to remain a month or two for the purpose of settling his affairs." Two other petitions followed upon this, one from certain residents reported to be mostly creditors of Cheong Ahlum, dated the 7th February, emanating, strange to say, from Dr. Bridges, now reported to be Colonial Secretary elect upon the early departure of Mr. Mercer,* and which also bore his signature, asking that prisoners connected with the poisoning case should not be forcibly deported though "every individual connected with the Esing establishment should be compelled to absent himself from the Colony," and that Cheong Ahlum "in the interests of many respectable inhabitants of the Colony," undoubtedly his creditors, should be allowed to remain in the Colony for a short period to settle his affairs. A counter-petition from "fifty-one residents of Victoria," dated the 9th February, asked for the immediate deportation of all the prisoners to Formosa. The following were the last two petitions alluded to :—

The Chinese and the prisoners.

Voluntary banishment of the prisoners asked for.

Petitions and counter-petitions in respect of Cheong Ahlum and the other prisoners.

The petitions.

Victoria, Hongkong,
7th February, 1857.

To

His Excellency The Governor, in the Executive Council.

We, the undersigned residents in this Colony, beg respectfully to submit to you the following facts relative to Ahlum and nine other prisoners, now under detention under Ordinance 2 of 1857, and also relative to forty-two other prisoners similarly detained.

We submit that the first above mentioned class of prisoners having been acquitted after a trial of a length unexampled in the Colony, by a majority of five jurors to one, their subsequent apprehension and detention are calculated to throw discredit on our system of administrating justice in the eyes of the Chinese population, who have been led to understand that a man cannot be twice called in question for the same offence, which is in reality the case in the present instance. Furthermore, we are of opinion that prisoners who have stood their trial, and have been legally absolved from the consequences of the crime of which they are accused, should not, by the law, be made responsible for any secondary consequences arising out of that accusation. We are, however, strongly of opinion that it is absolutely necessary for the interest of this Colony that every individual connected with the Esing establishment should be compelled to absent himself from the Colony, but not by deportation, to which, under the peculiar circumstances, we object, unless voluntary banishment be not self-imposed.

We therefore propose that due security be demanded for the immediate departure of all the prisoners alluded to save and except Ahlum, in whose case we consider it to be necessary, not only in fairness to himself, but for the interests of many respectable inhabitants of this Colony, that a limited period of one or two months should be allowed for the settlement of his

Ch. XVII § II. affairs; and for whom during such limited period and against his subsequent return, still higher securities should be obtained.

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The difference between deportation under Ordinance No. 2 of 1857, and the course we suggest, is such as we should hope would recommend itself to Your Excellency's favourable consideration.

GEO. LYALL.
R. C. ANTROBUS.
A. FLETCHER.
JOHN D. GIBB.
E. F. DUNCANSON.
C. F. STILL.
Wm. PUSTAU.
H. T. DE SILVER.
H. KINGSMILL.
W. A. BOWRA.
WM. T. BRIDGES.
WM. T. PROBST.
D. LAPRAIK.
N. CRAWFORD.

The following was the petition of the fifty-one residents asking that the prisoners be deported to Formosa :—

Hongkong, 9th February, 1857.

To

His Excellency the Governor of Hongkong in Executive Council Assembled.

This memorial showeth :—

That your memorialists, deeply regretting the recent verdict in the case of "The Poisoners," and dreading the deplorable consequences, likely to arise from the liberation of any of these culprits, who, we are given to understand still remain in custody,—humbly beg of Your Excellency to enforce upon them the terms of the recent Deportation Ordinance, and with this view respectfully suggest that the prisoners be sent to some secure place on the island of Formosa.

Signed by fifty-one residents of Victoria.

Government decide to keep the prisoners.

The crowded state of the Gaol induces the Government to release all except Cheong Ahlum.

Secretary of State's instructions.

Cheong Ahlum allowed

It need hardly be said that neither of these petitions was favourably considered and that Government decided, as before stated, to keep the prisoners in custody until better advised as to their disposal. The crowded state of the Gaol, however, induced the Governor to release them all, except Cheong Ahlum, on condition that they never returned to Hongkong again. In due time, however, the Colonial Secretary advised that Cheong Ahlum also should be liberated upon similar terms, if there was found no ground for bringing him to a new trial with reference to other individual sufferers. Finally, the Secretary of State's instructions under date the 8th May, 1857, were that, unless further facts were forthcoming justifying fresh proceedings, Cheong Ahlum should be allowed to leave the island on the

understanding that he never returned to it. The following was the despatch in question :— Ch. XVII. § II.

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to leave Hongkong unless fresh facts forthcoming.

The despatch.

Downing Street, May 8, 1857.

Sir,—I have to acknowledge your despatch No. 28 of the 11th of February last, reporting the trial and acquittal of Ahlum and others on the charge of administering poison with intent to kill; and that you have detained the prisoners, under Ordinance No. 2 of 1857, until you receive instructions from Her Majesty's Government as to further proceedings. It is probable that the interval which must elapse before my present despatch can reach Hongkong, will have furnished you with materials for forming your own judgment on this subject beyond those which your present despatch and its enclosures contain.

Judging, however, from what is before me, I am of opinion that if further evidence is discovered in the interim tending strongly to bring home the guilt of poisoning to Ahlum in the case of other individual sufferers, you will be justified in causing new criminal proceedings to be instituted. But this could not be warrantable unless the grounds for such a course are of the strongest as well as clearest character.

Supposing that no fresh criminal proceedings can be properly instituted, it seems to me that the best course is that indicated in the memorial or petition from Tam Atsoi and others; namely, without resort to the extreme measure of legal deportation, unless fresh and convincing reasons present themselves for it, to allow him to leave the island, and return to China, on the understanding that he will not be permitted to reside and trade at Hongkong again.

I have, etc.,

(Signed) H. LABOUCHERE.

Governor Sir JOHN BOWRING, etc., etc.

Sir John Bowring's reply to the despatch.

In reply, Sir John Bowring informed the Secretary of State that no stronger evidence could be adduced, and that he had gathered from the Chief Justice in confidential conversation, that the evidence laid before the Jury did not warrant a conviction. As will be seen hereafter, under instructions from Home, Cheong Ahlum was discharged from custody at the end of July, 1857, after entering into a bond.*

The complaint of Mr. Murrow to the Governor against Mr. Anstey regarding alleged insinuations in Cheong Ahlum's case.

A Chinaman sent to prison for trying to bribe a juryman in Cheong Ahlum's case.

Mr. Yorick Jones Murrow, the editor of *The Daily Press*, and also styling himself a merchant, on the 20th February complained to the Governor, (after having failed to obtain an explanation from Mr. Anstey,) of various insinuations by the Attorney-General in his address to the jury in Cheong Ahlum's case as to the part Mr. Murrow had taken in various matters connected with the case and which, Mr. Murrow considered, seriously affected him. He was informed in reply, on the 25th February, that "the Governor did not consider it a matter for the interference of the Government." It may be mentioned at this stage that on the 4th February, the third day of the hearing of the poisoning case, the Chief Justice sentenced a Chinaman to six months' imprisonment for trying to bribe one of the jury in

* Chap. XVIII., *infrà*.

Ch. XVII § II. 1857.

connexion with which Mr. Murrow also alleged that Mr. Anstey had vilified him to the jury.

**The detention of Cheong Ahlum and confederates in the Police cells.**

The detention of Cheong Ahlum and his confederates in the Police cells for twenty-two days,—a place wholly unsuitable for such a purpose, as one may readily imagine after what had transpired at a Coroner's inquest alluded to in January, 1856,* but which had met with no attention or consideration at the hands of the local authorities,—called forth much public indignation, the 'den' being given the cognomen of the "Black Hole of Hongkong." The discussion was carried on with much acrimony in England, and an aspect generally unfavourable to the Colony taken on the whole, a correspondent of *The* [*London*] *Daily News* of the 9th April, 1857, in sarcasm commending the matter to the British Ambassador in Turkey, who was then urging prison reform in that country. Ministers were questioned in both Houses of Parliament on the 15th May, as to the statements that had appeared in the papers respecting the confinement of the prisoners in the cells in question and in regard to which it was said both "the humanity and honour of the country were concerned." Correspondence regarding this matter will be found in *Parliamentary Papers on Chinese Affairs for 1857.*

**Public indignation.**

**The 'Black Hole' of Hongkong.**

**Acrimony in England upon the subject.**

**The 'den' episode and the personal attack on Mr. May.**

The 'den' episode further converted the affair into the means of making a personal attack upon Mr. May as to the nature of some house property which he had lately got rid of, and a great deal more than enough was said upon the subject. At the time of Mr. Anstey's onslaught on Mr. Mitchell,† the Executive Council expressed an opinion that no member of the Government ought to have any interest in landed property in the island. In consequence of this several officials who held landed property sold out, denuding themselves of all interest in the Colony beyond the regular monthly receipt of their salaries. The reason of this did not require much commenting on, but there was another class of public servants who, it was said, acquired an extra interest in the Colony by lending out money at a high rate of interest. The late Sheriff Holdforth,‡ it is recorded, had not been the first of that class, and it remained to be seen whether the persons driven out of the means of making money by land would not take to the more disreputable means of making money by lending at usurious rates.

**Government officers and their interest in landed property.**

**Money-lending by public officers at high rate of interest, and the late Sheriff Holdforth.**

**Hymn of thanksgiving composed by Sir John Bowring.**

A hymn of thanksgiving, composed by Sir John Bowring, was sung in a special service offered up to the Almighty at St. John's Cathedral, in gratitude for His sparing mercy in relation to the poisoning case, and two letters written by Sir John Bow-

* See *antè* Chap. XVI. § II., p. 370.
† *Id.* § I., p. 403.
‡ See *antè* Chap. XII. § I., pp. 276-278, and references there given.

ring at the time to friends in England, containing accounts of the diabolical affair, and which found their way into the press, will perhaps be thought of interest. The first is taken from *The Western Times*, and is as follows :—



1857. His letters containing accounts of the poisoning case.

Government House, Hongkong, 15th February, 1857.

My Dear Sir,—I receive regularly *The Western Times*, and thank you for sending it. Now and then I get a Devonian here to interest himself in it. At present we have here Captain Fortescue, who commands the *Barracouta*, and excellent service he has done. The vessel is the terror of the enemy.

No doubt you have heard of the attempt to poison the European residents of the Colony. No one of my family escaped, and I had several guests all of whom ate of the poisoned bread. Lady Bowring suffered much, some of the arsenic having got into her lungs.* I hope my life has been preserved for some purposes useful to my country and to mankind. It is a perplexing position to know that a price is set on our heads, that our servants cannot be trusted, that a premium is offered to any incendiary who will set fire to our dwellings, to any murderer who will poison or destroy us. Yet we try to possess our souls in peace, and I have the fullest persuasion that all which is taking place is co-operant to good—to great and permanent good.

If my life and health be preserved, and I still am honoured with the confidence which is placed in me, I trust to render a good account of my stewardship. We have many grievances to redress, and I will try to redress them; many securities to obtain, and I mean to obtain them. I am sure we shall be accompanied by the good wishes of good men; with kind regards to those who remember,

My dear Sir, most faithfully yours,

(Signed) JOHN BOWRING.

The following letter is taken from *The Liverpool Courier*, written a few days after the previous one, and in which the same hopes are raised that the writer's life might be preserved "for the real and enduring benefit of his country and mankind." Although Sir John Bowring's life was spared to a good old age,† it is doubtful, however, if the administration of affairs in these parts could have been placed in worse hands. One point, however, shows itself up prominently in his letter which cannot fail to be noticed and which is indisputable as regards our relations with the Chinese heretofore, namely, "that the forbearance with which they have been treated has been wholly misunderstood by them, and attributed to our apprehensions of their great power" :—

Hongkong, February 24.

My Dear Sir,—I doubt not that it will be a gratification to my Manx friends, to hear from the best authority, that we are all recovered from the effects of the poison, of which several hundred persons partook on the 15th January. About 10 lbs. of arsenic had been mixed with a batch of bread issued from the largest Chinese bakery in the Colony, and the excess of the quantity

* See reference to this, *antè* p. 415.

† See Chap. XXVIII., *infrà*.

Ch. XVII § II. 1857.

led to immediate alarm—application of emetics, and speedy ejection of the "perilous stuff." It left its effects for some days in racking headaches, pains in the limbs and bowels, etc. In my family, my wife, daughters, three guests, my private secretary, and myself, besides several servants, ate of the poisoned bread. Lady Bowring's has been a bad case, as it is thought some of the arsenic had got into the lungs, but danger is over now.* This mode of warfare is hard to deal with, and will, I am sure, excite a general sympathy and indignation. Large premiums have been offered by the mandarins to any who shall set fire to our houses, kidnap, or murder us; and many unfortunate wretches of all nations (as the hatred of the Chinese is indiscriminating) have been seized, decapitated, and their heads have been exposed on the walls of Canton, their assailants having been largely rewarded; they have even torn up the bodies of Christian men from their graves, in order to decapitate them and expose their mutilated skulls to the public gaze. All this is sufficiently horrible, but I doubt not the results will be most beneficial; for certainly we shall exact indemnities for the past, and obtain securities for the future. We shall not crouch before assassination and incendiarism, you may be assured. I did all that depended upon me to promote conciliation and establish peace. This was obviously my duty, but every effort I made was treated with scorn and repulsion. The forbearance with which the Chinese have been treated has been wholly misunderstood by them, and attributed to our apprehensions of their great power, and awe of the majesty of the "Son of Heaven." So they have disregarded the most solemn engagements of treaties, and looked upon us as "barbarians," who, in a moment of success, imposed conditions from which they were to escape when occasion offered, and when they could (in their judgment) safely do so. I doubt not that Government, Parliament, and public opinion will go with us in this great struggle, and pray that my life may have been preserved for the real and enduring benefit of my country and mankind.

Ever faithfully yours,

JOHN BOWRING.

WILLIAM KELLY, Esq.,
Douglas, Isle of Man.

* See her departure and death—Chap. XX., *infrà*.

# CHAPTER XVIII.

## 1857.

Departure of Mr. Mercer on leave.—Dr. Bridges appointed acting Colonial Secretary with private practice, and a member of the Executive and Legislative Councils.—Arrangement cavilled at.—Mr. Anstey dissatisfied.—Mr. Anstey's relations with Sir John Bowring.—Dispute between Mr. Anstey and Sir John Bowring at a meeting of the Royal Asiatic Society.—Legal official communications ordered to be sent to the Crown Solicitor.—Hostilities between the Executive and Mr. Anstey.—Piratical seizure of the *Queen*.—Reconstruction of the Legislative Council.—Officer commanding troops, member of the Executive Council.—Mr. Joseph Jardine, member of the Legislative Council.—Messrs. Forth and Davies, official members.—Mr. George Lyall, unofficial member.—Fresh attempt at bread poisoning.—Police warning.—Order of Court regulating proceedings in writs of Foreign Attachment.—Gaol Commission.—'Governor of the Gaol' created.—Mr. Inglis appointed.—No legal authority for creation of title 'Governor of the Gaol.'—Ordinance No. 1 of 1853.—Military guard withdrawn from the Court House.—Incendiary fire.—Headless body found.—Feeling of insecurity.—Departure of Mr. Alexander, Registrar, on leave.—Mr. Masson, acting Registrar.—Execution of Ng King Leang.—Order of the Queen-in-Council of 2nd February, 1857, for the conveyance and removal of British subjects convicted in China.—Murder of Mr. C. Markwick, Government Auctioneer.—Chief Justice Hulme and the 'black cap.'—Origin of the black cap.—Mr. Duddell appointed Government Auctioneer.—Mr. Jarman, Appraiser of the Supreme Court.—Death of Mr. J. Brown, solicitor.—Attempt to carry off Colonel Caine and Mr. Caldwell.—Ordinance No. 6 of 1857.—The Governor proposes its suspension, which is objected to by the Chief Justice, Attorney-General, and others.—Ordinance No. 8 of 1858.—Dr. Bridges summonses two respectable residents for a public nuisance.—Ordinance No. 17 of 1844.—Dr. Bridges abused.—Sir James Graham in the House of Commons.—The *Arrow* incident.—"The advantage of the opinion of the acting Attorney-General."—Major-General Garrett.—Lieutenant-General Ashburnham.—Scene in Court between Mr. Anstey and Dr. Bridges.—Regina *v.* Cheong Ah Ng.—Dr. Bridges informs the Court of the disallowance of Ordinance No. 15 of 1856 and prisoner wrongly convicted.—Mr. Anstey's contempt for the quibble started by Dr. Bridges.—The Chief Justice's ruling.—The mistake committed in appointing Dr. Bridges Colonial Secretary with private practice.—Mr. W. H. Mitchell goes on leave.—Mr. May, Assistant Magistrate.—Mr. Grand-Pré, acting Superintendent of Police.—Mr. W. Tarrant recovers damages against Cheong Ahlum.—Mr. Anstey and Dr. Bridges as counsel in the case.—The anomalous position of Dr. Bridges.—Dr. Bridges' visit to the Earl of Elgin on board H.M.S. *Shannon*.—Altercation between Captain Peel and Dr. Bridges for flying the Governor's flag.—Lord Elgin's levée and departure.—Constables convicted of extortion.—Conviction of Wong Ahlin for burglary.—Granted a free pardon.—Capture and conviction of Eli Boggs, the American pirate.—Trial of Captain and officers of the American ship *John Wade* for murder.—Chinese Trades Unions and Secret Associations.—Government warning.—Important arrests and conviction for unlawful assembly of tailors, shoemakers, and washermen.—Failure of attempt to enlist Malays at Singapore, for the Police.—Mr. Grand-Pré enlists discharged Portuguese soldiers from Macao.—No Police barrack accommodation.—Cheong Ahlum is discharged from custody under instructions from the Secretary of State.—His creditors in the lurch.—Mr. Tarrant's attack upon Dr. Bridges in consequence.—He is prosecuted by Dr. Bridges for libel.—Mr. Tarrant addresses the Secretary of State.—Land reclamation. The Bowring Praya.—Secretary of State's instructions regarding mode of compensation for damage.

Chap. XVIII.

Departure of Mr. Mercer on leave. Dr. Bridges appointed acting Colonial Secretary with private practice,

Mr. Mercer, Colonial Secretary and Auditor-General, having obtained eighteen months' leave of absence on the 14th February, Dr. W. T. Bridges, who was on terms of great intimacy with Mr. Mercer, was, on the recommendation of the latter, appointed on the same date to officiate for him, retaining at the same time the right to follow his own profession, and he was at once sworn in as a provisional member of the Executive and Legislative Councils.

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and a member of the Executive and Legislative Councils.

Arrangement cavilled at.

This arrangement was cavilled at by the community, but it was said that the Governor was in a dilemma and had applied to Dr. Bridges as "the most suitable person" to fill the post, and urged upon him as a point of duty that he should undertake the office, which Dr. Bridges only consented to do provided he could still retain his right to practise at the bar. The half pay available for the office was only £600 a year. It is but right that what was stated against the propriety of allowing Dr. Bridges private practice whilst acting in the high position of Colonial Secretary and Adviser to the Governor, and therefore as incompatible with such position, should be reproduced at this stage as showing that public opinion was not wrong in raising a cry against the anomalous and extraordinary privilege allowed to Dr. Bridges, having regard especially to the irregularities that were alleged against him afterwards:—

"Dr. Bridges may well say 'Mr. Mercer is one of his dearest friends, and that he would rather that his tongue should drop out of his mouth than say anything against him.'* The language is strong but perhaps true. If the new man were to devote himself solely to the duties of his office, perhaps, as far as a good insight into Hongkong matters goes, we could have no better man; but he is to be allowed to practise as a barrister; to be at the beck and call of every man who can pay him a fee; to attend before the Judge on summonses, on motions, in hearings in Court, all implying private study and occupation of time. Now, what the public want, and what they have a right to get, is, the entire labour of an intelligent man .... *no man can serve two masters.*"

Mr. Anstey dissatisfied.

Mr. Anstey's relations with Sir John Bowring.

How far these remarks proved correct,—though Sir John Bowring afterwards explained to the Home Government why he had appointed Dr. Bridges,†—subsequent events will show. At all events Mr. Anstey who, as Attorney-General, had reason to be dissatisfied with the arrangement, took no small share of credit in disclosing afterwards the irregularities laid at Dr. Bridges' door, arising from the dual and varied position he held. But the public well knew by this time that the Government was divided against itself, and that Mr. Anstey disdained to hold intercourse of any kind with Sir John Bowring. Altercations, indeed, had already taken place between the Governor and the Attorney-General in public. At a late meeting of the Royal Asiatic Society there occurred a dispute between them. Sir John Bowring had read a translation of a short Siamese story which, he said, he had *received* from an American lady thus leading to the inference that she was the original translator. A member of the Society had a remembrance of having seen the tale before, and turning up *The Chinese Repository* discovered that it had been translated by the first Mrs. Gutzlaff‡ many

Dispute between Mr. Anstey and Sir John Bowring at a meeting of the Royal Asiatic Society.

* See *antè* Chap. XVII., p. 418.

† See Governor Bowring's despatch of the 4th June, 1858, to the Secretary of State, Chap. XXI., *infrà*.

‡ Dr. Gutzlaff, as will be remembered, was three times married—see *antè* Chap. XII. § II., p. 304.

years before. Mr. Anstey thereupon charged Sir John with something like a wilful attempt to impose on the Society. The Governor said Mr. Anstey used very strong language, to which the latter replied "that if he could have made the language stronger, he would." The Society, however, adopted the more charitable inference that Sir John Bowring had been imposed upon.*

Legal official communications ordered to be sent to the Crown Solicitor.

Dr. Bridges was now taken to be at the Governor's elbow, and persons having legal communications to make to the Government were ordered to make them through the medium of the Crown Solicitor! The following Notification will bear repetition, and at this date cause amusement:—

GOVERNMENT NOTIFICATION.

Notice is hereby given that all official communications involving questions of law are hereafter to be sent, in the first instance, to G. Cooper Turner, Esquire, who will take the necessary steps with reference to the same.

By Order,

W. T. Bridges,
*Acting Colonial Secretary.*

Colonial Secretary's Office,

Victoria, Hongkong, 17th February, 1857.

Hostilities between the Executive and Mr. Anstey.

Hostilities between the Executive and Mr. Anstey may now be said to have reached an acute stage, and it is remarkable, considering the otherwise disturbed state of affairs in the Colony, that nothing more eventful had happened. But more anon.

Piratical seizure of the *Queen*.

Reconstruction of the Legislative Council.

Officer commanding troops member of the Executive Council.

Mr. Joseph Jardine, member of the Legislative Council.

Messrs. Forth and Davies, official members.

Mr. George Lyall, unofficial member.

On the 26th February Government offered heavy rewards for the apprehension of those guilty of a piratical seizure of the steamer *Queen*. On the same day it was announced that a reconstruction of the Legislative Council had been sanctioned by the Home Government by a slight increase of both classes, officials and unofficials,† and further that the senior military officer commanding the troops shall at all times be a member of the Executive Council.‡ Accordingly, on the 9th March, Mr. Joseph Jardine was gazetted a member of the Legislative Council in the place of Mr. David Jardine, deceased,§ and on the 15th May, Mr. Forth, Colonial Treasurer‖; Mr. Davies, Chief Magistrate, and Mr. George Lyall were gazetted official and unofficial members respectively, all these appointments being subsequently confirmed from Home.

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* Notwithstanding the clear proof thus established, as to Sir John Bowring having at least been imposed upon, he nevertheless subsequently adhered to his statement, as is to be seen in his work on 'Siam,' Vol. II., Appendix D., p. 378, and wherein will be found reproduced the story in question, headed "Translation by *An American Lady*, of a Siamese Story."

† See Mr. Labouchere's despatch on the subject, alluded to *antè* Chap. XVI. § II., p. 395.

‡ On this subject see also Vol. II., Chap. LXXXVII. and LXXXIX.

§ *Antè* Chap. XVII. § I., p. 407.

‖ Formerly Captain 21st Fusiliers.

Chap. XVIII. 1857.

Since the bread-poisoning case, naturally the people in Hongkong, other than Chinese, had always been fearful lest a repetition of the attempted offence took place and consequently great precaution was exercised, and it was with horror that the community learnt that a baker in the employ of Mr. Duddell, who had now become the principal baker in Hongkong, had been overheard to tell his fellow-workmen that he had been offered $2,000 to mix a soporific with the biscuit dough. The man was immediately taken into custody, and the following warning was posted at the Club House, where, it would appear, the principal residents now gathered daily for news, and also at the Central Police Station :—

Fresh attempt at bread poisoning.

Police warning.

Police Department,
4th March, 1857.

The Superintendent of Police considers it right to intimate to the foreign community, that it is not desirable to relax the system of vigilance maintained within the Colony.

The Superintendent does not desire to excite alarm, and begs to state that no positive source of danger is known ; but with a treacherous enemy, appearances ought not to be relied upon, or induce a feeling of security to the neglect of precautionary measures.

C. May.

Life, under such circumstances, quite apart from the dissensions then prevalent, could not have been a very happy one in Hongkong, at this period of its history.

Order of Court regulating proceedings in writs of Foreign Attachment.

On the 5th March the Court passed an Order regulating proceedings in writs of Foreign Attachment, which, after approval by the Legislative Council, was duly published. It was notified on the 9th July that the same had been approved by the Queen.

Gaol Commission.

'Governor of the Gaol' created.

Mr. Inglis appointed.

In consequence of the frequent delinquencies connected with prison discipline, a Commission was appointed, on the 5th March, to inquire into the condition of the Gaol, resulting in the creation of the appointment of a responsible head known as 'Governor of the Gaol of Victoria.' The post was conferred, on the 12th May, upon Mr. A. L. Inglis, the Deputy Sheriff, who was sworn in as a Justice of the Peace on the same date. Mr. Inglis, it will be remembered, had resigned the office of Registrar-General in May, 1849,* and subsequent records show that he had done so in order to proceed to the gold fields of California, which apparently had proved unprofitable to him. He had a good knowledge of the Cantonese dialect, and this, added to the fact that he had before proved a valuable officer, and that there was a scarcity of reliable officers on the spot, no doubt induced the Government to employ him again.

No legal authority for creation of title 'Governor of the Gaol.'

Under what authority the title 'Governor of the Gaol' was

* *Ante* Chap. XI., p. 244.

created is not apparent. Ordinance No. 1 of 1853 'for the Regulation of the Gaol' gave no such power.*

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The Court House up to this time had been in charge of a military guard. This guard was withdrawn early in March, for what reason is not shown,† though it may have been due to short-handedness, and to the more frequent calls on the military. The presence of the guard, it is recorded, had always induced an agreeable feeling of security, and their withdrawal at the present crisis was not looked upon with any satisfaction, especially as the Government was gradually proceeding with a reduction of the Police Force, and it was not unnaturally considered, having regard to the times, that it was acting unadvisedly, if not hastily.

Ordinance No. 1 of 1853.

Military guard withdrawn from the Court House.

An incendiary fire had stirred up the vigilance of the authorities, and a body found without a head near the town, gave people a disagreeable feeling of insecurity. Notwithstanding this, however, the authorities persisted in withdrawing the military guard from the Court House and in reducing the Police Force, though probably there was an excuse as regards the Europeans who formed part of the latter, taken in connexion with their irregular proceedings.

Incendiary fire.

Headless body found.

Feeling of insecurity.

Mr. Alexander, the Registrar of the Supreme Court,‡ proceeded on eighteen months' leave of absence on the 11th March, being replaced by Mr. Masson, Deputy Registrar, and the latter by Mr. F. W. Mitchell.

Departure of Mr. Alexander, Registrar, on leave.

Mr. Masson, acting Registrar.

Ng King Leang, one of three prisoners condemned to death at the extra Sessions of the 27th March, as being leaders in the revolt of the coolies on board the *Gulnare*, was executed on the 9th April in the presence of his two accomplices to whom grace had been extended.

Execution of Ng King Leang.

On the 31st March was published an Order of Her Majesty-in-Council dated the 2nd February, providing for the conveyance and removal of British subjects convicted of crimes and offences committed within the dominions of the Emperor of China.

Order of the Queen-in-Council of 2nd February, 1857, for the conveyance and removal of British subjects convicted in China.

Mr. Charles Markwick, the Government Auctioneer, an old man of sixty-three years of age, who had been resident in China for thirty years, was found strangled in his bed on the morning of the 2nd April. He had been sick and confined to his bed for some two or three weeks. The deed was perpetrated by his door-coolie, who decamped, the motive being robbery. Arrested shortly afterwards outside the Colony, Ho Apo, the murderer, was tried before the Supreme Court on Monday, the 4th May, found guilty, and sentenced to be hanged, the execution taking place on Wednesday morning, the 13th May.

Murder of Mr. C. Markwick, Government Auctioneer.

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* Upon this point see Vol. II., Chap. XXXVIII.
† See *antè* Chap. VIII. § II., p. 183.
‡ *Antè* Chap. XVI. § II., p. 383.

Chap. XVIII. 1857.

Chief Justice Hulme and the 'black cap.'

It is said of Chief Justice Hulme that he never carried his 'black cap' when taking the Bench in Criminal Sessions. He invariably left it behind, and whenever a jury returned a verdict of guilty carrying with it a sentence of death, Chief Justice Hulme would then retire for a few minutes, presumably going for his 'black cap,' and return into Court with the cap on.*

Origin of the black cap.

* It is popularly supposed that the black cap is assumed by a Judge only in passing sentence of death. This, however, is a mistake. It is a portion of ordinary judicial costume, and is worn on many occasions. It is an emblem, of course, of the Judge's great judicial dignity and importance, he being entitled to be covered, even under the most solemn circumstances, and in the presence of the Sovereign herself. It is worn when in presence of the Sovereign, at her coronation, and in her courts. But the most solemn occasion when the black cap is assumed is when passing sentence of death. Immediately after the Clerk of the Crown has "called upon the prisoner" to know "why judgment of death should not be passed upon him to die according to law," the Judge solemnly places the cap upon his wig, and proceeds with his sad duty.

Mr. Duddell appointed Government Auctioneer.

Mr. Jarman, Appraiser of the Supreme Court.

On the 14th April Mr. George Duddell was gazetted Government Auctioneer in succession to Mr. Markwick, and Mr. James Jarman succeeded the latter as Appraiser of the Supreme Court.

Death of Mr. J. Brown, solicitor.

Mr. James Brown, solicitor and notary public, of the firm of solicitors known locally as Gaskell and Brown, died on the 28th April, at the age of thirty-five.

Attempt to carry off Colonel Caine and Mr. Caldwell.

At the Criminal Sessions held on the 2nd May, Chun Achee and two others were tried for high treason, the charge being that he had confederated with others to kill or carry off Colonel Caine, the Lieutenant-Governor, and Mr. Caldwell, the Protector of Chinese. Chun Achee being found guilty, sentence of death was recorded against him, the two others being discharged.

Ordinance No. 6 of 1857.

On the 5th May, the Legislature passed Ordinance No. 6 of 1857 "for registration and regulation of the Chinese people... and for other purposes of Police." It contained no less than forty-five sections. The late troubles had called the attention of Government to the necessity of ridding the Colony of the many bad characters which infested it. After the Ordinance

The Governor proposes its suspension.

* See the trial of Giblons and others, for murder, February Criminal Sessions, 1859, Chap. XXVI., *infrà*.

had been actually published, an attempt was made by Sir John Bowring to suspend its action, so far as the registration itself was concerned, on the plea of want of means, but the Governor was opposed by the Chief Justice, the Attorney-General, the Colonial Treasurer, and the three non-official members of Council, all of whom considered the measure one of absolute necessity for the safety and welfare of the Colony; insisting that even if there were no funds for such a purpose, application should be made to the Home Government for a grant. The Ordinance, however, only survived but a short time, being repealed on the 10th May, 1858, by Ordinance No. 8 of that year.

which is objected to by the Chief Justice, Attorney-General, and others.

Ordinance No. 8 of 1858.

Dr. Bridges' conduct was now strongly commented upon in consequence of his summoning two respectable inhabitants, Messrs. Mody and Dadhabhoy Eduljee, who lived opposite to him in Hollywood Road, for what he construed into "a public nuisance" under Ordinance No. 17 of 1844, in that they had disturbed his rest on the night of Saturday, the 2nd May, till early morning of Sunday, "by a noise of singing, clapping of hands, and stamping of feet, and where a convivial party was being held, in consequence of which neither he nor Mrs. Bridges could sleep." Mr. Davies, in dismissing the case, said the Ordinance did not apply. Nor did it,* and naturally occasion was taken to abuse Dr. Bridges, *a propos* of whose conduct an incident in the House of Commons on the 27th February, 1857, was now brought up and quoted, evidently in retaliation. Sir James Graham, in his speech on Mr. Cobden's motion regarding the seizure by the Chinese authorities in Canton of the crew of the lorcha *Arrow*, sailing under British colours but whose nationality was disputed by them and which was eventually the cause of our hostilities with China, in consequence of their hauling down the British flag on board that boat, said "that it was pretended that the owner was a British subject, but that," added Sir James Graham, "was only contended for by the acting Attorney-General; for our friend, Mr. Anstey, had not arrived when these events happened, and Sir John Bowring had only the advantage of the opinion of the acting Attorney-General." So much for Dr. Bridges' interference with his neighbours and for his officiousness.

Dr. Bridges summonses two respectable residents for a public nuisance.

Ordinance No. 17 of 1844.

Dr. Bridges abused.

Sir James Graham in the House of Commons.

The *Arrow* incident.

"The advantage of the opinion of the acting Attorney-General."

Major-General Sir Robert Garrett, K.C.B., having assumed the command of the troops in Hongkong, was sworn in as a

Major-General Garrett.

* How this Ordinance could have been construed by Dr. Bridges as applying to such an 'offence' (*sic*) seems astonishing. As will be recollected, Ordinance No. 17 of 1844 was passed by Major-General D'Aguilar in connexion with the bamboo-beating nuisance of the time and applied strictly to noises made by watchmen in private employ (see *antè* Chap. II., pp. 56, 57). It is not clear, however, under what law Major-General D'Aguilar subsequently prosecuted and brought to conviction a Mr. Welch for an almost similar 'offence' as that which Dr. Bridges complained of (see *antè* Chap. III. § II., p. 87). A resident, Mr. Strachan, seemed nearer the point when he construed clause 12 of section 2 of Ordinance No. 14 of 1845, as applying to his case (*antè* Chap. XII. § II., pp. 304-306).

Chap. XVIII. — 1857. Lieutenant-General Ashburnham.

member of the Executive Council on the 25th May, but relinquished that position on the arrival of Lieutenant-General the Honourable Thomas Ashburnham, C.B., on the 12th June following, as Commander-in-Chief of the Land Forces.

Scene in Court between Mr. Anstey and Dr. Bridges. Regina *v.* Cheong Ah Ng. Dr. Bridges informs the Court of the disallowance of Ordinance No. 15 of 1856 and prisoner wrongly convicted.

A shameful scene took place in Court between the Attorney-General and the acting Colonial Secretary, Dr. Bridges, at the Criminal Sessions held on the 25th May. At the conclusion of the trial of *The Queen* v. *Cheong Ah Ng*, for larceny, after the Attorney-General had retired, Dr. Bridges, the acting Colonial Secretary, informed the Chief Justice that the prisoner had been improperly convicted, the witnesses being unsworn, the Ordinance which allowed unsworn examinations (No. 15 of 1856) having been disallowed. It may be mentioned that *The Government Gazette* of Saturday, the 23rd May, contained a Notification of the disallowance by the Home Government of Ordinance No. 15 of 1856,*—"*An Ordinance for amending the Law of Evidence and Trial by Jury*,"—the fourth clause of which was as follows:—

> 4. A heathen witness, in any Court or before any person empowered to administer an oath, shall not be sworn either before or upon giving his testimony, unless the said Court or person shall think fit so to direct; in which case the said witness shall be sworn according to his conscience. But every heathen witness shall, before the taking of his said evidence, be by, or by the order of, the said Court or person, duly warned to speak the truth, and informed of the penalties to which, in case he shall not speak the truth he will become liable; it being hereby declared and enacted, that the penalties of perjury shall be deemed and taken to apply to false testimony given by any such witness, whether sworn or unsworn, in any case where, if he had given the same upon oath, he would by law have thereby become liable to the same.

An inexcusable oversight, it seems, was committed by the local Government, in their not having officially notified the Attorney-General of the disallowance of the Ordinance; but that Mr. Anstey was aware of it through the *Gazette*, he did not profess to deny. Notwithstanding the disallowance, he allowed the case to be tried without the witnesses being sworn—a course in which, as will be shown, he was justified by the terms of a subsequent Ordinance. But now for a description of what really did occur in Court.

Immediately before the jury had returned their verdict, the acting Colonial Secretary called to him the Crown Solicitor, and pointed out that the Attorney-General had overlooked the disallowance of the Ordinance, and that a verdict under the circumstances would be illegal, and might lead to the escape of the prisoners. Mr. Cooper Turner thereupon crossed over to Mr.

* See *antè* Chap. XII. § II., p. 315 *note*.

Anstey, and told him what Dr. Bridges had said. Mr. Anstey, however, took no further notice of it, but, on the verdict of guilty being returned, instantly, as was his custom, it is said, left the Court. Dr. Bridges then went up to the Registrar's desk, and said something to the Chief Justice, which appeared to be of the same tenor as the message delivered to Mr. Anstey through Mr. Turner, for His Lordship sent for the Attorney-General, and explained to him what had been said. Mr. Anstey thereupon "expressed great indignation at the conduct of the Executive Government, as represented by Dr. Bridges—said that they had not deigned to show him the despatch disallowing the Ordinance, or even to communicate its tenor, except through the Government notice open to all." Mr. Anstey further intimated the utmost contempt for the technical quibble started,—and denied the right of the acting Colonial Secretary to appear in Court at all. 'If he and his friends,' said Mr. Anstey, 'think me unfit to fulfil my functions, there is another tribunal before which they can cite me, *and let them there do their worst.*' He then referred to cases reported in *The Hongkong Register* for December, 1851, and January, 1852, and contended that the Court had power [under Ordinance No. 5 of 1856, s. 4,*] to admit unsworn testimony, independently of the disallowed Ordinance. He also reminded the Court of cases where Mr. Hulme himself had so ruled during the present Attorney-Generalship.

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Mr. Anstey's contempt for the quibble started by Bridges.

The Chief Justice, on examining the cases in question, said that it was so, and that he was of opinion the present conviction was correct;—but, says a report, "at the same time hinted in his own quiet but firm way to the Attorney-General, that, since he had been aware of the circumstance, it was his duty to have informed the Court of the disallowance of the Ordinance, and at all events thus have permitted him (the Chief Justice) the exercise of *his* privilege."

The Chief Justice's ruling.

This matter again showed what a grave error had been committed in the bestowal of the Colonial Secretaryship with private practice upon Mr. Bridges whose present offence could not be looked upon as a slight one. He was a sworn barrister practising in the Supreme Court and at the moment was waiting

The mistake committed in appointing Dr. Bridges Colonial

* The following was the section:—"Every Court, Magistrate, Commissioner, or officer qualified to take affidavits or depositions in any matter, civil or criminal, where any person competent to give evidence or make affidavit therein shall refuse to be sworn thereto, may, at his discretion, permit him or her to make an unsworn declaration or statement of his or her testimony in the said matter, which said declaration or statement shall thenceforth have the same force and effect in all respects as his or her deposition or affidavit (as the case may be) to the like purport, if sworn to in the usual way, would have had: But no such permission shall be granted to any person who shall not have been first, by the said Court, Magistrate, Commissioner, or Officer, duly warned to speak the truth, and informed of the penalties which he or she will incur by making a false declaration or statement under this Ordinance; and further, who shall not (unless he or she happen to be a heathen) have first satisfied the said Court, Magistrate, Commissioner, or officer, that his or her objection to take the oath proceeds from a religious or conscientious belief that

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Secretary with private practice.

to make a motion in that Court; he saw what he considered an illegal trial taking place, yet he allowed that trial to come to a conclusion, and then, when he thought there was no remedy, he interfered in an improper manner. Such startling revelations must only have tended to prove that at least Mr. Bridges had no great knowledge of law. As might be expected this little incident gave cause to unpleasant correspondence afterwards between the belligerents, with backstairs trickery and undoubtedly coming revenge as a prelude.

Mr. W. H. Mitchell goes on leave. Mr. May, Assistant Magistrate. Mr. Grand-Pré, acting Superintendent of Police.

Mr. W. H. Mitchell, Assistant Magistrate, Sheriff, and Marshal of the Vice-Admiralty Court, having obtained six months' leave of absence on the 30th May, Mr. May was appointed as before, to act in the various positions, Mr. Grand-Pré taking over the acting Superintendentship of Police.

Mr. W. Tarrant recovers damages against Cheong Ahlum.

On the 23rd June the case of Tarrant *v.* Cheong Ahlum was heard at Nisi Prius, when the Jury awarded $1,010 to the plaintiff, Mr. William Tarrant, editor and proprietor of the local paper *Friend of China*,* for damages sustained in consequence of his having been poisoned by bread delivered by the defendant on the 15th January. It was evident that the action, even if successful, would be, in the result, only throwing water on a drowned mouse. Cheong Ahlum may have originally gone into Gaol a rich man, but it was expected that, when he was finally released when orders as to his disposal were received from Home, he would not carry very much out with him, except perhaps the 'white-wash.' Consequently the verdict of $1,010 puzzled most people to know why this case, brought by one of the several hundreds poisoned, should have taken so much money to effect a cure.

Mr. Anstey and Dr. Bridges as counsel in the case.

Curiously enough, in this case, Mr. Anstey, the Attorney-General, was counsel, and Mr. Cooper Turner, Crown Solicitor, solicitor for the plaintiff, while Dr. Bridges, acting Colonial Secretary, was counsel, with Mr. Stace, as solicitor, for the defendant. While it did not appear that there was any great harm that the plaintiff should have been represented as he was, considering the cause of the action, it certainly appeared anomalous, if not morally wrong, considering especially the cause of his then detention, that the defendant should have been represented by a gentleman who then held the position of Colonial Secretary and in which he had advised the Government. It will also be remembered that Dr. Bridges had also defended Cheong Ahlum when on his trial for the attempt at poisoning.† But such was then the state of affairs in Hongkong that nothing would appear astonishing to any one

The anomalous position of Dr. Bridges.

* See *ante* Chap. XII. § I., p. 280.
† *Ante* Chap. XVII. § II., p. 416.

familiar with the records of that time, and of course 'money' or otherwise 'private practice' formed the basis of these immoralities.



Dr. Bridges' visit to the Earl of Elgin on board H.M.S. *Shannon*.

In connexion with Dr. Bridges, a good story is told at this period having reference to a visit he paid on board H.M.S. *Shannon* to the Earl of Elgin and Kincardine, Her Majesty's Plenipotentiary to China, who had arrived in Hongkong on the 2nd July. Having regard to the legal position he held, the narrative will not be considered out of place. As Sir John Bowring was unwell on the day following Lord Elgin's arrival, Dr. Bridges, with Mr. Wade and Mr. Parkes, of the Diplomatic Department, went off to the *Shannon* to convey the Governor's regret at not being able to wait upon His Lordship. Dr. Bridges, as representing the Governor, thought he had a right to fly the Governor's flag, which he accordingly displayed on the staff at the stern of the barge. As soon as this flag was seen from the *Shannon*, the drums beat to quarters and a guard of honour was drawn up ready to receive the Governor. One of the officers on board, who knew both the Governor and Dr. Bridges, informed Captain Peel that the Governor was not in the boat; the crew and guard were thereupon dismissed, and Dr. Bridges was received by Captain Peel on the quarter deck, when the following conversation took place between him and Dr. Bridges:—

Altercation between Captain Peel and Dr. Bridges for flying the Governor's flag.

*Captain Peel.*—What do you mean, Sir, by flying that flag? You have nearly caused me to give you a Governor's salute.

*Dr. Bridges* [*stammering and confused, but trying to look bold.*]—Sir, Sir, I represent the Governor.

*Captain Peel.*—*You* represent the Governor. You have no business to fly that flag, Sir.

Here, it is reported, the post captain turned round and walked aft, leaving "the representative of Her Majesty's representative planted there to the admiring and quizzical gaze of the officers and crew of H.M.S. *Shannon*." In the meantime the two gentlemen representing the diplomatic department were admitted, and after their audience, Lord Elgin, who, it is said, laughed heartily at the discomfiture of Sir John's representative, desired him to be admitted.

Lord Elgin's levée and departure.

During his stay in Hongkong, Mr. Wade, in his capacity of Chinese Interpreter, was attached to the suite of Lord Elgin, who held a public levée on the 8th July, and left for Calcutta on the 16th of the same month by the *Shannon*.

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1857.

Constables convicted of extortion.

Conviction of Wong Ahlin for burglary.

Granted a free pardon.

The Criminal Sessions of June began on Tuesday, the 30th of that month. The list was a very long one and very important, as containing the names of six foreigners for trial on very serious charges. On the first day of the Sessions, two Police Constables charged with extortion were sentenced to three months' imprisonment with hard labour, and a Chinaman named Wong Ahlin convicted of burglary was sentenced to ten years' transportation. He did not, however, remain long in prison, for on the 27th October, 1858, he received a free pardon, on what grounds it does not appear, though it was surmised to be for "good behaviour" only.

Capture and conviction of Eli Boggs, the American pirate.

On Saturday, the 4th July, the trial of Eli Boggs, an American, for piracy and murder, took place. He, like W. Fenton, whose case is reported early in 1852,* was a well known leader of pirates, and several cases were clearly traced to him, especially of shooting down men on board the different vessels attacked. The United States Consul, now styled 'General' Keenan,† with the permission of the Court, addressed the jury on behalf of the prisoner. The jury, taking a merciful view of his case, found him guilty of piracy only, and the Chief Justice sentenced him to transportation for life. It was matter for regret that an example was not made of this man for the benefit of a large class of men who were at this period still engaged in the same pursuits.‡

Trial of Captain and officers of the American ship *John Wade* for murder.

Another brutal case, in which Americans also were concerned, was tried on the same date. It was that against the master, the first and second officers, the carpenter, and the steward of the American ship *John Wade*, for the murder of a seaman of that ship. The master and first officer were defended by Mr. Day, and, at the request of the Chief Justice, Mr. Kingsmill undertook to watch the case on behalf of the others.§ The evidence disclosed a most revolting series of cruelties perpetrated on the deceased and all the crew, principally by the second mate. Here again the jury took a merciful view of the case, acquitting the last two and finding the other three guilty of manslaughter. They were, as in the other case, sentenced to transportation.

Chinese Trades Unions and Secret Associations.

The authorities were now called on to interfere with the Trades Unions which had of late given trouble. They were in reality secret associations which had long existed among the Chinese in the Colony, and which were not confined to the artizans but extended to every species of employment. The books of these

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* *Antè* Chap. XII. § III., p. 316.

† See *antè* Chap. XVI. § I., p. 363.

‡ See his release noticed in Chap. XXXI., *infrà*.

§ On the subject of assigning Counsel to defend prisoners, see *antè* Chap. XVI. § II., p. 381, and references there given.

societies were in the hands of the Government and showed a system of private intimidation by means of fines, of the existence of which those best acquainted with the Chinese had no previous conception. On the 16th July, a Government Notification appeared upon the subject which was as follows:— Chap. XVIII. 1857.

Government warning.

"Whereas, according to the law of England,* every tradesman or mechanic is at liberty to perform his work at whatever rate of remuneration it seems good to himself to accept, and all combinations for the control of such liberty are illegal: this is therefore to give notice that any persons found to be interfering as above with the freedom of trade will be prosecuted by Government."

Upon the publication of this warning, several important arrests were effected and a large number of men fined for illegal assembly, consisting principally of tailors, shoemakers, and washermen.

Important arrests and conviction for unlawful assembly of tailors, shoemakers, and washermen.

Strictures about the Police poured in again at this time. The Government, at their wit's end, decided upon making an attempt to enlist Malays in Singapore, but the attempt proved a failure.† Mr. Grand-Pré, on the other hand, succeeded in securing at Macao the services of thirty Portuguese soldiers discharged from the garrison there, their time of service having expired. These men bore excellent characters and had been strongly recommended by the Governor of Macao. The records do not show how these particular men bore themselves afterwards, but from the frequent complaints made from time to time in regard to the constitution of the Force, it is doubtful whether these helped in improving its *morale*. One cause assigned for the unsatisfactory state of affairs was that there was, up to this period, no barrack accommodation for the men, who lived where they could, many of them "in low and dirty hovels" and under no discipline whatever.

Failure of attempt to enlist Malays at Singapore, for the Police.

Mr. Grand-Pré enlists discharged Portuguese soldiers from Macao.

No Police barrack accommodation.

In the middle of July instructions were received from the Secretary of State to discharge from custody Cheong Ahlum who had been under detention since the 5th February last,‡ but he was only discharged at the end of July, on signing a bond that he would not return to the Colony before the expiry of five years under the penalty of one thousand pounds. This bond was drawn up by Mr. Inglis, the '*Governor of the Gaol*.'§ On signing it, Cheong Ahlum was at once discharged, and immediately left the island, leaving his creditors in the lurch. One of them, Mr. Tarrant, the editor of *The Friend of China*, who had, it will be remembered, recovered damages against Cheong Ahlum. Having such a weapon as his paper at his command,

Cheong Ahlum is discharged from custody under instructions from the Secretary of State.

His creditors in the lurch.

Mr. Tarrant's attack upon Dr. Bridges in consequence.

* See Introduction, p. 24, *note*.
† Upon the subject of the Malay as a Policeman, see *antè* Chap. XII., p. 279.
‡ See *antè* Chap. XVII. § II., p. 418.
§ As to this title see *antè* p. 428.

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He is prosecuted by Dr. Bridges for libel.

Mr. Tarrant addresses the Secretary of State.

Mr. Tarrant at once launched out in a violent attack on the acting Colonial Secretary, who was Cheong Ahlum's counsel, culminating in a charge of libel being brought against Mr. Tarrant by Dr. Bridges, which will be found referred to hereafter.* Baffled in his endeavour to obtain the proceeds of his judgment from Cheong Ahlum consequent upon his release, Mr. Tarrant, notwithstanding, on the 8th August, addressed the Secretary of State upon the subject.

*Land reclamation.

The Bowring Praya.

Secretary of State's instructions regarding mode of compensation for damage.

In connexion with the reclamation of certain lands along what was known as the Bowring Praya† and in reference to which Mr. Anstey had incurred much ill-will,‡ the question as to the mode in which compensation (if any) was to be given for damage, and the rents settled for lands not comprehended in the original leases, having been referred to the Secretary of State, the following instructions of Her Majesty's Government were received upon the subject :—

"There is no doubt that land recovered from the sea, whether artificially or naturally, belongs to the Crown, and that the Crown is at liberty to dispose of it in the same manner as of any other land in the Colony. But it is also clear that the acquisition of such land by any other person than the owner of the marine lot behind it, would very much diminish the value of the marine lot, and in many cases render it useless for the purpose for which it was acquired. While, therefore, the rights of the Crown and the interests of the public require that the claim of the Crown to such lands should be firmly maintained, a sense of justice requires that the equitable claims of the holders of the original marine lots should be liberally considered.

The most practicable way of reconciling these interests would be to appoint assessors on the part of the Crown and the proprietor of the marine lot, or, if it be preferred, a jury, to assess the damage done to the original marine lot by the creation of a new marine lot in front of it. To put up the new marine lot to auction, and to allow the proprietor of the original lot to acquire it at the highest price which may be bid for it, less the sum assessed as the damage done to the original lot. If, however, he should refuse to become the purchaser, then to pay to him out of the price of the new lot the sum assessed as damage.

Some such arrangement would meet the justice of the case. It would, of course, require modification to meet the peculiar circumstances of individual cases, *e.g.*, when the whole new land is not put up in a single lot. It would also be necessary to provide that in no case should more be claimable as assessed damages than the amount realized by the sale of the new lot. But points of detail like these can best be settled by the local authorities on the spot. It is sufficient to indicate the general principle on which such cases may be dealt with."

These instructions were afterwards published in the form of a Government Notification under the signature of Dr. Bridges, as acting Colonial Secretary.

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* See Chap. XIX., *ubi suprà*.

† Portuguese—Lit. 'Sea-shore.'

# CHAPTER XIX.
## 1857.

Mr. Anstey goes to India on sick leave.—Mr. Kingsmill acts as Attorney-General.—Mr. Anstey's career in Hongkong reviewed.—His fatal quarrel with the Chief Justice.—Local editors memorialize Chief Justice about accommodation for themselves and reporters.—Sixty Chinese convicts transported to Labuan.—European convicts bribe native guards and escape.—Trial and conviction of the guards.—Prosecution of Mr. Tarrant for libelling Dr. Bridges.—The facts.—The verdict.—Fined £100.—Mr. Tarrant's memorial to the Secretary of State.—Mr. Tarrant's sympathizers pay his fine and costs.—Mr. Tarrant boastingly publishes the list of subscribers.—Trial of Ma Chow Wong for confederating with pirates.—A notorious pirate informer and suspected Imperial spy.—After committal for trial Chief Justice grants bail.—The Chief Justice's discretion commented upon.—Ma Chow Wong's threats after being bailed.—Ma Chow Wong and a confederate found guilty.—The sentence.—Evidence of Eli Boggs, the American convict, in the case.—A previous trial of Ma Chow Wong for felony.—After Ma Chow Wong's conviction, Mr. Caldwell interests himself in the convict.—He impugns the verdict of the jury.—Dr. Bridges, acting Colonial Secretary, induced to bring about an inquiry.—The undue support held forth to Mr. Caldwell by Dr. Bridges.—Report of Messrs. May and Inglis after the finding of the pirate's books.—Relationship by Chinese usage between Mr. Caldwell and the pirate.—The baseness of Dr. Bridges' conduct.—A Government inquiry is acquiesced in.—'The law to take its course.' Ma Chow Wong turned upon the roads.—Mr. Anstey's subsequent charges against Mr. Caldwell.—The reason for Mr. Caldwell's exertions on behalf of Ma Chow Wong.—Ma Chow Wong's career.—An anonymous letter in *The Straits Guardian* addressed to the Earl of Harrowby on Hongkong affairs.—Letter attributed to Mr. Y. J. Murrow.—Mr. Murrow addresses the Earl of Harrowby setting out his grievances.—Mr. Cleverly, Surveyor-General, gazetted to a seat in Council.—Return of Mr. Mitchell, Assistant Magistrate, from leave.—Ordinance No. 12 of 1857.—Complaints of Admirals on the station.—A definite form when Admiral Sterling held command.—Mr. Tarrant repeats libel against Dr. Bridges.—He apologizes.—Death of Mr. Edger, member of the Legislative Council.—Mr. Dent gazetted to the vacancy.—Major-General Van Straubenzee in command of the Forces.—The representatives of "the late Chief Justice Hulme" advertized for in *The Times*.—Advertizement a mystery.

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Mr. Anstey goes to India on sick leave.

Mr. Kingsmill acts as Attorney-General.

Mr. Anstey's career in Hongkong reviewed.

His fatal quarrel with the Chief Justice.

Mr. Anstey having been in poor health for some time, suffering severely from chronic diarrhœa, a short trip to Macao having been of no benefit to him, was granted six months' leave of absence on the 27th July. He took his departure for Calcutta on that day by the Steamer *Lancefield*, being replaced in the interim by Mr. Henry Kingsmill, the youngest member of the Bar. It was agreed that on the departure of Mr. Anstey, who had become a favourite with many people at one time much opposed to him, the Colony would feel his absence, for though stubborn, self-opinionated, and full of prejudices, he was an honest and faithful servant of the Government, and a fearless and determined reformer of abuses, where such existed. His uncompromising severity in the discharge of what he considered his duty made him many enemies, certainly among those who ought to have had more sense; but a better spirit apparently had been manifested towards him before he left, though it was admitted that his fatal quarrel with the Chief Justice* had

† *Antè* Chap. XVI. § II. p. 386.

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made his position as regards the latter always a peculiar one. As will be seen later on Mr. Anstey returned in December, a few weeks before his leave was up.

**Local editors memorialize Chief Justice about accommodation for themselves and reporters.**

The editors of the newspapers, having memorialized the Chief Justice on the subject of accommodation for themselves and their reporters, were informed that in future they could take their seats with the professionals of the Court if there was room at their table and also that they might enter with the practitioners by the reserved door as was already notified in a board at the entrance door nearest the Bench.*

**Sixty Chinese convicts transported to Labuan.**

On the 14th August was published a proclamation by the Governor authorizing the transportation of sixty Chinese convicts to the Colony of Labuan, and, shortly afterwards, that number left by the *Annie*. News reached Hongkong not very long after that ten had died in Labuan, having been mostly "in a sickly condition when landed."

**European convicts bribe native guards and escape.**

On Saturday, the 29th, Mr. Inglis, the Governor of the Gaol, became aware of the fact that three of the European convicts under his charge, named Luscomb, Wallace, and Rogers, had, with the assistance of two of the native guard, Indian Police Constables, who had been bribed for the purpose, made their escape from the Gaol.

**Trial and conviction of the guards.**

Tried at the Criminal Sessions held on the 2nd November, these two men were sentenced to two years' hard labour. Of the three who escaped, Wallace was the only one re-captured, being found eventually on board the *Homer* at Amoy.

**Prosecution of Mr. Tarrant for libelling Dr. Bridges.**

The Criminal Sessions for August commenced its sittings on Monday, the 31st August. There were two cases of very considerable local interest on the list set down for trial,—one of them a charge of *libel* against Mr. William Tarrant, the other a charge of *confederating with pirates* against a well known character named Ma Chow Wong. With regard to the former, the following is a brief account.

**The facts.**

After the trial of Cheong Ahlum in February last, for a wholesale attempt to poison the foreign community by means of arsenic mixed in the bread issued from the 'Esing' bakery, and which resulted in an acquittal, Cheong Ahlum was re-apprehended† under No. 2 of 1857—the Deportation Ordinance—as a suspected person, and committed to prison on an order signed by Mr. May, the Acting Assistant Magistrate and Sheriff; but was subsequently detained by warrant under the signature and seal of His Excellency the Governor until the pleasure of the Home Government could be ascertained regard-

* See *antè* Chap. XII. § III., p. 319, and references there given.
† See *antè* Chap. XVII. § II., p. 418.

ing him. When this occurrence took place, Dr. Bridges was simply a barrister practising in the Court here, and as such had been applied to to defend Ahlum, under agreement that he was to receive the sum of $1,000 for so doing. He likewise acted as counsel for Cheong Ahlum in several civil actions, for which, he received additional fees, amounting to $150. Shortly after Cheong Ahlum's re-incarceration, Mr. Mercer left the Colony on leave,* and Dr. Bridges was appointed acting Colonial Secretary, with the right of private practice. In his capacity of barrister, therefore, he was employed to defend Cheong Ahlum in an action for damages brought by Mr. Tarrant, in which the latter was awarded the sum of $1,010.† Meanwhile Cheong Ahlum was detained a prisoner; but in the middle of July, instructions came from Home that, unless some further circumstances had transpired implicating him in the poisoning affair, he was to be set at liberty. Accordingly the Governor ordered his release, but Dr. Bridges, aware of the claims against him, and on which he naturally supposed writs of detainer had been issued and lodged in the hands of the Sheriff, told His Excellency that the Home Government could not interfere in such matters, and, with Sir John Bowring's sanction, consulted the Chief Justice as to how he should manage. Mr. Hulme gave it as his advice that Cheong Ahlum should be transferred from the criminal to the civil list of prisoners, but, for security, detained in the criminal side of the Gaol. This was accordingly done, the Colonial Secretary still labouring under the impression of writs having been issued. For twenty-two days was Cheong Ahlum thus illegally kept in prison, until at length his solicitor thought fit to do what he should have done long before, namely, applied to the Colonial Secretary to know on what grounds his client was detained in Gaol, seeing that instructions for his release had been received from Home. The Colonial Secretary replied that he was held under arrest by civil process; and was much astonished to learn then for the first time that he was in error, and that no writs had been issued. Now made aware of the mistake he had committed, Dr. Bridges wrote up to the Governor for further instructions, and was told to set Cheong Ahlum free; but in the dread that imputations might be cast upon him, inasmuch as he had acted as counsel for the prisoner both in the Criminal and Civil Courts, he, by order of Sir John Bowring, directed the Governor of the Gaol to warn the Sheriff, that unless detainers were served upon Cheong Ahlum within twenty-four hours, the latter would at the end of that time be released from prison. The order was shown to Mr. May, the Sheriff,

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and he, it seems, objected to serving the writ upon a prisoner within the precincts of the criminal prison, but told Mr. Inglis, the Governor of the Gaol, that he would see about it in the morning. Morning came, then afternoon, without anything being done in the matter by the Sheriff, and in accordance with the instructions, Cheong Ahlun, having found securities for the amount required, was discharged at the appointed hour, three o'clock, and quitted the Colony, leaving his creditors to recover the money due to them in the best way they might.*

Among others thus left in the lurch, but who had, of course, only themselves or their attorneys to blame for it, was Mr. William Tarrant, with his unliquidated claim for damages of $1,010. He, instead of blaming himself for negligence, chose to look upon the discharge of Cheong Ahlum as a piece of chicanery on the part of the acting Colonial Secretary, and accordingly, without apparently troubling himself to institute inquiry as to the truth of his suppositions, grossly libelled Dr. Bridges in his newspaper, as follows:—

"We are placed, by the verdict of one of the most respectable juries ever empanelled in this Colony, in a position to challenge the Insolvent's Balance Sheet; and should it be, as we shall not be surprised to find, that Ahlum's bankruptcy is due not so much to his very proper stoppage at *business* here as to some astounding extortion in the shape of lawyer's fees, or payment of hireling scribes—the facts will duly be made patent to the public, and, it will be hoped, produce a public benefit,—so that the jury's award will not, in any case, be altogether lost." †

And again ‡

"Dr. Bridges's action in the matter of releasing Ahlum the poisoner from durance, forms a climax to the many extraordinary things of his performing since he has acted as Colonial Secretary. The Sheriff was informed that bonds would be given conditioned for the non-return of Ahlum to this Colony for five years—and on receiving such bonds Ahlum was to be released. The Sheriff, in consequence of this notification, told the Gaol Governor to be prepared to let him go; and, a few hours after telling the Gaol Governor this, Ahlum was out and off!—Mr. Inglis, in the exercise of his judicial capacity, did what was needful with the recognizances tendered;—said documents being drawn, it is believed, by Dr. Bridges himself—neither the acting Attorney-General nor the Crown Solicitor knowing anything about them.

There are many who will say,—"Well, Ahlum is off, a good riddance of bad rubbish." But what say his creditors? Of course, the reason why Dr. Bridges has managed to get Ahlum away quickly and quietly is apparent to all. The sums drawn by him, Dr. Bridges, for managing the case would not have been allowed had he, Ahlum, gone through the Insolvent Court.—Dr. B.——in short, dreaded the *exposé* threatened in our issue of Saturday, the 25th ultimo. But what can the public think of a Government that, to all intents and purposes, licenses swindling—that literally holds out a premium to villainy of the deepest dye?"

Dr. Bridges, indignant at such an unfounded charge being brought against him, intimated to Mr. Tarrant that unless he

* See *antè* Chap. XVIII., p. 437.
† *Friend of China*, 25th July, 1857.
‡ *Id.*, 5th August, 1857.

publicly contradicted and apologized for his misstatements, he would prosecute him for defamation. This the latter refused to do, sending instead a most unsatisfactory message; and nothing therefore was left for the complainant but to proceed against his libeller either civilly or criminally. The case was accordingly placed in the hands of the acting Attorney-General, Mr. Kingsmill; and the criminal proceedings reported below were the result, ending in a verdict of guilty and a fine of £100.

No attempt was made either to disprove the libel or to prove justification—the questions put to the witnesses for the defence being totally irrelevant to the matter at issue. The jury was an excellent one, and Mr. Tarrant had had a special jury by his own request, and some of its members, it was said, were his personal friends. The case was so clear, that there could be no two opinions as to the verdict, and the Chief Justice in his charge pointedly said so. Previous to passing sentence, he administered to Mr. Tarrant, the following rebuke:— The verdict.

"You have been guilty (said His Lordship) of a gross, malicious, and libellous attack upon Dr. Bridges, aspersing his character as a private individual, as a professional gentleman, and as a public officer. Any one (continued the Chief Justice) is liable to err, but when a mistake is discovered or pointed out, there is nothing unmanly in acknowledging our error, and nothing ungentlemanly in apologizing for what we may have said or done while labouring under misapprehension; and I feel assured that, had you tendered an apology, Dr. Bridges would have accepted it, and would not have placed you in the position in which you now stand."

The Chief Justice particularly drew Mr. Tarrant's attention to the report in *The Friend of China* of the 26th August, purporting to be a fair account of the proceedings before the Chief Magistrate, and which he, Mr. Tarrant, when he inserted it, must have known to be untrue.* It was far from His Lordship's intention to interfere with the liberty of the Press, but it was his duty to see that its high privileges were not abused. "In the present instance," said Mr. Hulme, "you, William Tarrant, have been fairly convicted by a jury of having wilfully maligned William Thomas Bridges, Doctor of Civil Law; and the sentence of the Court is, that you be fined one hundred pounds, and be imprisoned till the same be paid." Fined £100.

* The following was the report in question:—

"Why did not the *Register* give the *gentlemanly* depositions according to his notes?—What *can* we anticipate in the shape of injury to our case by their publication? As he has not done so, we will here do it for him—

*Magistrate.*—You had no money for defending Ahlum, you say, so you could fear nothing if he went through the Insolvent Court.

*Dr. Bridges.*—No.—I did not say that—I said I had no money from Ahlum. Tam-choey and Asow brought me $1,000.

*Mr. Tarrant.*—So, Sir, you first swore you had none of Ahlum's money, and then, when examined by the Magistrate, could not conceal that you had had $1,000 from others *for account.* Before swearing this, you, of course, satisfied yourself that *that was not Ahlum's*

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Mr. Tarrant's memorial to the Secretary of State.

It will be remembered that it was in reference to this case that Mr. Tarrant had addressed the Secretary of State relating the circumstances leading to the present action and which referred to Dr. Bridges' relations with Cheong Ahlum, displaying at the same time anxiety on his part in connexion with the suit, to the end probably that any complaint of his to such high quarters might influence Dr. Bridges to withdraw the charge against him.* As it is, except for the mental anxiety the action must have caused him, Mr. Tarrant was not much out of pocket, for meeting with sympathizers outside, as in the case, under similar circumstances some years back, of a previous editor of the very paper which he now conducted,† a subscription (for which Hongkong, as in the case of addresses to departing officials, is noted, as will be noticed as this work proceeds) was got up in his behalf, fully covering the fine and costs which he had been subjected to in defending the prosecution. Mr. Tarrant afterwards boastingly published the list of subscribers.‡

Mr. Tarrant's sympathizers pay his fine and costs.

Mr. Tarrant boastingly publishes the list of subscribers.

Trial of Ma Chow Wong for confederating with pirates.

A notorious pirate informer and suspected Imperial spy.

The other case, tried at the same Sessions, was that, as before stated, of the famous, or rather infamous, Ma Chow Wong. This man, a notorious pirate informer and suspected Imperial spy, in whose shop a cargo of sugar, piratically taken from a trading junk was found, was committed for trial on the 20th July for aiding and abetting pirates. Ma Chow Wong, it may be added, was, in 1854, connected with Ye Fong, the rebel chief who then held Shanghai, and at that time was engaged in Hongkong in enlisting recruits for him. The night he was apprehended he offered the constable who effected his arrest a bribe of $1,000 to allow him to escape. After his committal

After committal for

have spoken only of the criminal case. It is on record that you have had $1,000 for that. Well—what about that civil action of mine?—Did you get nought for that?

*Dr. Bridges.*—None of Ahlum's money.

*Mr. Tarrant.*—None of Ahlum's—whose then? Love and affection case, eh?

*Dr. Bridges.*—Mr. Stace paid me my fees.

*Mr. Tarrant.*—Oh!—Your Worship will be good enough to take a note of that reply—First, Dr. Bridges led the Court to believe he had nothing—then that he had $1,000,—and now it comes out he has had more. *To Dr. Bridges.*—And now, Sir, the amount, if you please?

*Dr. Bridges.*—I have not got my Fees Book with me. It was, let me see, seventy-five—one hundred—two hundred and twenty-five—say, two hundred and twenty or fifty dollars.

*Mr. Tarrant.*—Is that all!—Take time; don't be in a hurry, you are on your oath, mind. No contract for more if Ahlum should get rich in his own country?

*Dr. Bridges.*—(with rapt smile)—Contract!—No!

*Mr. Tarrant.*—And this, from Mr. Stace, you swear was *not* Ahlum's money? Thank you, that will do. Had we had two independent justices on the Bench at this moment, as I requested at the commencement of the case, it would stop here."—*Friend of China*, August 26.

* *Antè* Chap. XVIII., pp. 437, 438.

† See *antè* Chap. III. § II., p. 83.

‡ See the case against Mr. Y. J. Murrow for libelling the Governor Sir John Bowring, tried at the Criminal Sessions in April, 1858, (*infrà* Chap. XX.) wherein the Chief Justice, alluding to the above case as "setting the law at defiance" by the fine imposed upon the defendant Tarrant having been raised by subscription, sentenced Mr. Murrow to im-

for trial, he applied for bail which the Magistrate refused; but on application to the Supreme Court, the Chief Justice ordered bail to be taken. His Lordship was believed to have acted rather incautiously in this matter, and was taken to task accordingly. The Magistrate's better knowlege of the character of the man ought, it was considered, to have carried weight with the Chief Justice who, it was said, "leading the quiet and secluded life he did," possibly knew little of what was occurring in the Colony among the native portion of the community, except through the newspapers, and therefore had but limited means of estimating the man's true character. The very first use the ruffian made of his freedom was to threaten the witnesses who had given evidence against him and this at the very door of the Magistracy, and for which he was recalled before he left the Gaol and bound over to keep the peace. But notwithstanding these strong comments upon the discretion exercised by the Chief Justice, Ma Chow Wong did not abscond. He was brought to trial on Wednesday, the 2nd September, on a charge of confederating with pirates, when he was found guilty by a majority of five to one. He was defended by Mr. Day.

trial Chief Justice grants bail.

The Chief Justice's discretion commented upon.

Ma Chow Wong's threat after being bailed.

A man named Wong Achoi, defended by Mr. Green, was tried along with him for participation in the same acts, and was found guilty unanimously. Both were sentenced to fifteen years' transportation. Evidence of attempting to bribe the Police was adduced, and Eli Boggs, the American pirate convict, sentenced last July,* swore that he had seen Ma Chow Wong on board the pirate fleet in which he was, and it may be noted also that Ma Chow Wong had once before, in 1847, stood his trial at the Supreme Court for felony in being concerned in a robbery committed in a European shop, when he escaped the clutches of the law. Having for so many years been enabled to place the Police authorities at defiance, it is not to be wondered at that his countrymen were afraid to expose him, or that any one assisting in his prosecution should afterwards have been subjected to the wrath of his patrons. But their vengeance was baffled, and two cases of receiving bribes against Tong Aku, the Police Court Interpreter, by whose zeal and integrity the conviction of Ma Chow Wong was brought about, and against Sun Ah See, Chinese clerk at the Police Court, both of whom had suffered very harsh treatment in consequence, from the time of their arrest until discharged, broke down upon investigation before the Magistrate.

Ma Chow Wong and a confederate found guilty.

The sentence.

Evidence of Eli Boggs, the American convict, in the case.

A previous trial of Ma Chow Wong for felony.

After Ma Chow Wong's conviction, it will hardly be credited that the Protector of Chinese, Mr. Caldwell, interested himself

After Ma Chow Wong's conviction,

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in the convict to the extent of impugning the verdict of the jury upon the plea that the criminal's notorious character had blinded the jurors! Mr. Caldwell, at whose investigation the charges were preferred against Tong Aku and Sun Ah See, could hardly bring himself to believe that his principal, if not most "trustworthy" informant, and whom he had through ill or good report always supported (bringing to one's recollection that other pirate, Too Apo, of 1847 fame*), was guilty of the offence of which he had been convicted, and he now exerted himself by himself petitioning the Government, and in inducing the acting Colonial Secretary, Dr. Bridges, who seems to have had implicit confidence in Mr. Caldwell, to bring about an inquiry into the whole facts, before the Executive Council. An important element not to be lost sight of was that in the books found in Ma Chow Wong's possession, there were entries of pecuniary transactions between him and Mr. Caldwell.

Mr. Caldwell interests himself in the convict.

He impugns the verdict of the jury.

Dr. Bridges, acting Colonial Secretary, induced to bring about an inquiry.

The undue support held forth to Mr. Caldwell by Dr. Bridges.

Another extraordinary circumstance is shown in this matter by the undue support which Dr. Bridges held forth to Mr. Caldwell. After the finding of the books in the pirate's possession, Mr. May, Superintendent of Police, and Mr. Inglis, Governor of the Gaol, were directed to inquire into and report upon them. Subsequently Mr. May reported thus :—

Report of Messrs. May and Inglis after the finding of the pirate's books.

"Ma Chow Wong has been apprehended and his house searched, the books and papers being seized, amongst the latter are some papers *in Mr. Caldwell's writing, showing that he had taken a direct interest in the business of Ma Chow Wong.* There are some entries in Chinese of moneys received from or for Mr. Caldwell."

Relationship by Chinese usage between Mr. Caldwell and the pirate.

Mr. Inglis' report was corroborative of Mr. May's as regarded an evident intimacy between Mr. Caldwell and the pirate, and went so far as to allege "*a relationship by Chinese usage between them.*" Dr. Bridges, however, saw fit thus to remark on Messrs. May and Inglis' report :—

"I have no hesitation in advising His Excellency that I conceive both Mr. May and Mr. Inglis to be more actuated by a desire to injure Mr. Caldwell, of whose position both are jealous, than by a real wish to advance public interests."

The baseness of Dr. Bridges' conduct.

The frivolousness, to say nothing of the baseness of this allegation, was most apparent.† Mr. May's length of service and ability, it is recorded, gave him prospect for promotion to the Magistracy entirely irrespective of the Registrar-General's standing in the way; and Mr. Inglis' after-advancement to the Harbour Mastership and Marine Magistracy was a probability,

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* See *antè* Chap. IX., p. 190, and references there given.

† See the finding of the Executive Council in the charges brought by Mr. Caldwell against Mr. May—Vol. II., Chap. XXXV.

in which Mr. Caldwell's position could in no way interfere; while judging morally there were no grounds for assuming that either Mr. May or Mr. Inglis would depart from the strict line of probity for the simple purpose of injuring a brother-officer. After the inquiry had been acquiesced in, however, and after lengthy sittings in which the Governor, Lieutenant-General Ashburnham, Colonel Caine, and Dr. Bridges himself took part, it was decided to allow the law to take its course.

A Government inquiry is acquiesced in.

'The law to take its course.'

Ma Chow Wong, who up to this time had been allowed to retain his 'queue' in defiance of the prison rules which authorized the docking of tails of all Chinese sentenced to transportation, was turned upon the roads on the 27th October, along with the other convicts pending deportation. It will be seen later on, in reference to the charges which Mr. Anstey, the Attorney-General, brought against Mr. Caldwell, that it was not astonishing that the latter had so very much exerted himself in endeavouring to obtain Ma Chow Wong's release. It may be appropriate here to mention that the piracy of which this man was convicted was only one of a huge series extending over several years. The case wherein he had been convicted was a most horrible one, a boat of which he was part owner having captured a vessel laden with sugar and other goods, the crew, including some of their wives, were murdered and thrown overboard, while part of the cargo, as before stated, was placed and found in the pirate's warehouse, and formed evidence in the investigation.*

Ma Chow Wong turned upon the roads.

Mr. Anstey's subsequent charges against Mr. Caldwell.

The reason for Mr. Caldwell's exertions on behalf of Ma Chow Wong.

Ma Chow Wong's career.

The attention of the community was drawn at this time to an anonymous letter in *The Straits Guardian*, of the 22nd August, on the subject of Hongkong affairs, and addressed to the Right Honourable the Earl of Harrowby. The document which occupied six-and-a-half columns of the paper was criticized locally as a strange admixture of truth and falsehood, and, though anonymous, its origin was traced to a certain "dilapidated individual" in Hongkong. Amongst others, Governor Bowring, Colonel Caine, ex-Sheriff Holdforth, Mr. Mercer, Dr. Bridges, Mr. Anstey, Mr. Cooper Turner, Mr. Caldwell, against all of whom the writer was known to have an ill-will, came in for abuse. Consequent upon this letter being attributed to Mr. Y. J. Murrow (whose name already appears in this work in connexion with Mr. Anstey, in February last),† he, on the 30th September, addressed Lord Harrowby denying that he was the author of the letter, and at the same time setting forth "the treatment to which he had been subjected in consequence from the hands of the Hongkong Government." Mr.

An anonymous letter in *The Straits Guardian*, addressed to the Earl of Harrowby, on Hongkong affairs.

Letter attributed to Mr Y. J. Murrow.

Mr. Murrow addresses the Earl of Harrowby setting out his grievances.

* See further Chap. XXIV., *infrà*., as to Ma Chow Wong, and his banishment to Labuan.
† *Antè* Chap. XVII. § II., p. 421.

Chap. XIX. 1857.

Murrow then proceeded to set out his grievances, attributing especially an increase in his land taxes to spite consequent upon the authorship of the letter under consideration being attributed to him, as there could be no question that he was the party referred to as being a 'dilapidated individual,' "because our truculent Attorney-General in one of his splenetic effusions that he converts the Supreme Court into an arena for indulging in, designated him by calling him a '*dilapidated individual.*'" This, no doubt, was a reference to the case of Cheong Ahlum, with regard to which Mr. Murrow, it will be remembered, had complained without effect to the Governor about Mr. Anstey.*

Mr. Cleverly, Surveyor-General, gazetted to a seat in Council.

On the 17th October the Surveyor-General, Mr. C. St. G. Cleverly, was gazetted to a seat in the Legislative Council.

Return of Mr. Mitchell, Assistant Magistrate, from leave.

On the 5th November Mr. W. H. Mitchell having returned to the Colony† and resumed his duties as Assistant Magistrate, Sheriff, and Marshal of the Vice-Admiralty Court, Messrs. May and Grand-Pré reverted to their respective offices of Superintendent and Assistant Superintendent of Police.

Ordinance No. 12 of 1857.

A draft Ordinance, entitled "An Ordinance for checking the spread of venereal disease," which had been read a third time in the Legislative Council, was published in the *Gazette* of the 14th November and subsequently passed on the 24th of that month and numbered 12 of 1857. Great complaints had been made by the Admirals on the station, ever since Hongkong was a British settlement, of the serious diseases of a certain kind contracted by their men on shore which almost made their ships ineffective. These complaints assumed a definite form while Admiral Sir James Sterling held the command,‡ and it was then proposed to pass an Ordinance which, after reference to the Home Authorities, now assumed a practical form.§

Complaints of Admirals on the station.

A definite form when Admiral Sterling held command.

Mr. Tarrant repeats libel against Dr. Bridges.

Mr. Tarrant, the editor of *The Friend of China*, having repeated in effect the same libel for which he was fined in August last on the verdict of a jury, Dr. Bridges again brought him before the Magistrate's Court. He gave evidence of a similar character to that adduced on the first occasion. Mr. Tarrant then said he had been writing under a misapprehension. Dr. Bridges said he had no desire to trouble the Colony with such prosecutions; all he wanted was to vindicate his character.

* *Antè* Chap. XVII. § II., p. 421.—See further in reference to Mr. Murrow and his

On this Mr. Tarrant offered to make the necessary apology to be drawn up by Mr. Davies, the Chief Magistrate, and there, apparently, the matter ended.

He apologizes.

Mr. J. F. Edger, unofficial member of the Legislative Council,* died at Shanghai on the 19th November, at the age of fifty-five, and on the 26th December Mr. John Dent was gazetted to the vacancy.

Death of Mr. Edger, member of the Legislative Council.

Mr. Dent gazetted to the vacancy.

On the departure from the Colony, on the 19th November, of Lieutenant-General Ashburnham,† Major-General Van Straubenzee, having assumed command of the Forces, was duly sworn in as a member of the Executive Council.

Major-General Van Straubenzee in command of the Forces.

The following advertizement relative to the Chief Justice appeared in the second column of *The Times* of the 1st December. It caused astonishment in the Colony afterwards, for no one had ever heard of a contemporary Chief Justice Hulme, and Mr. Hulme, the Chief Justice of Hongkong, the community were pleased to think, was still among them, and though an invalid, yet able to perform the functions of his office,—"a blessing," it was said, "the Colony need well be thankful for." Rumour spoke of the Chief Justice's intention to retire at the end of the year, if Government would grant him a reasonable pension after his long service in such a trying climate as that of Hongkong, "when," added the report, "the appointment of his successor would then be looked for with much anxiety by all in China." As it is, the advertizement was a mystery, nor was it ever explained away :—

The representatives of "the late Chief Justice Hulme" advertized for in *The Times*.

Advertisement a mystery.

> The late Chief Justice Hulme.—The representatives of the above gentleman are requested to communicate with Messrs. Wilkinson & Kidd, Saddlers, 257 Oxford Street, Corner of Park Street, W.

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* See *antè* Chap. XII. § I., p. 287.
† *Antè* Chap. XVIII., p. 432.

# CHAPTER XX.

## 1857-1858.

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## SECTION I.

## 1857.

Return of Mr. Anstey from leave.—Attempt to bribe him.—Compromise of felony not only excused but encouraged by laws of China.—Mr. Anstey's recommendation upon the subject.—The Chief Justice approves. Apathy of the Chinese.—Loong Ah Sai charged with attempt to drown a European.—Warning of Government to boat people witnessing offences to render assistance.—Government Notification in 1880, on the law regulating the arrest of offenders by private persons.—Marriage of Mr. Kingsmill, barrister.—Escape and capture of the notorious convict Ho Ah Chee.—Improvements in the Gaol under Mr. Inglis.

## SECTION II.

## 1858.

Office of assistant Superintendent of Police abolished. Mr. Grand-Pré appointed 'Collector of Police and Lighting Rates.'—Mr. Weatherhead appointed clerk of the Supreme Court.—Proceedings of the Legislative Council published for the first time.—Meetings of the Legislative Council again asked to be held with open doors.—Motion in the Legislative Council for admission of strangers forwarded to Secretary of State.—Orders for admission to the Press issued.—Ordinance No. 1 of 1858.—Unsatisfactory state of affairs in the Supreme Court.—Complaints of the Chinese against extortionate charges of attorneys.—Frequent postponements and reference of cases to arbitration.—Cases adjourned at request of attorneys without assigning reason or for want of an interpreter.—Complaint at cases being frequently referred to Mr. Caldwell as arbitrator.—The Chief Justice taken to task.—Mr. Caldwell's heavy fees.—The Chinese and their confidence in Chief Justice Hulme.—Ordinance No. 3 of 1858, s. 14.—Dissatisfaction in respect of the legal profession.—The Attorney-General approached upon the question of amalgamation of the profession.—The barristers' letter to Mr. Anstey upon the subject.—Mr. Anstey's reply.—The correspondence communicated by Mr. Anstey to the Law Society.—The reply of the Secretary to the Law Society.—Meeting of the two branches of the profession.—Mr. Anstey in the chair.—The result of the meeting.—Ordinance No. 3 of 1858.—Ordinance No. 12 of 1858.—Robbery and murder in the shop of Mr. Glatz, watchmaker.—Capture of the murderer. Look Ah Song.—Interesting speech by Mr. Anstey upon the state of crime in the Colony.—The Attorney-General congratulates the Court upon reduction of piracy cases and attributes same to conviction of Ma Chow Wong.—Conviction and execution of Look Ah Song.—Case of Teep Ching Leu *v.* Lum Ah Kun, damages for false imprisonment.—Extraordinary conduct of Mr. Anstey, counsel for plaintiff, in his private capacity.—Mr. Anstey causes the defendant to be taken into custody for perjury.—The jurors protest and allude to defective interpretation.—Mr. Anstey leaves for Canton.—Mr. Anstey's arrest.—His reply to the protest of the jurors. The question of interpretation treated.—Discharge of the defendant. Criticisms.—Complaints against the fee paid for marriage to the Chaplain. Mr. Anstey's opinion.—Admission of Mr. Hazeland as an attorney of the Court.—He joins Mr. Cooper Turner, the Crown Solicitor.—Wong A Shing, the first Chinese juryman in Hongkong.—Mr. Anstey asks for Police protection.—Conviction of two Chinese, one a pawnbroker, for larceny and receiving stolen property.—Heavy sentence of transportation against the pawnbroker, the receiver.—The pawnbroker's sentence is commuted without the Attorney-General being consulted. The Chief Justice and the Executive.—Ordinance No. 11 of 1858.—Escape of convicts from Gaol.—A turnkey the worse for liquor.—The validity of marriages in China. Despatch from the Foreign Office.—Mr. G. W. Caine, Colonel Caine's son, appointed Secretary to the Superintendency of Trade, *vice* Morrison, on leave.—Ordinance No. 2 of 1858.—First Ordinance published in Chinese.—Motion of the Chief Justice that proceedings of Council be published as recorded in the Journal of the Clerk of Councils.—Ordinance No. 3 of 1858.—The Crown against Mr. Y. J. Murrow for libelling the Governor, Sir John Bowring.—The interests of the firm of Jardine, Matheson, & Co., in which the Governor had a son a partner.

— The facts.—The defence.—The Chief Justice's summing up.—The verdict.—The defendant sentenced to imprisonment and fine.—Mr. in the prison.—Afflicted with 'Bowring-phobia.'—Sir John Bowring's shameful administration.—Mr. Murrow conducts his paper in prison.—His attacks against Sir John Bowring continue unabated.—*The Illustrated London News* upon the case and the weakness of Sir John Bowring.—On his release Mr. Murrow claims $5,000 damages against Sir John Bowring.—Frequent attempts at incendiarism.—Chu Aqui, a notorious pirate, at the head of incendiaries.—Mr. Kingsmill, J.P., and Assistant Magistrate, *vice* Mr. Mitchell on leave.—Departure of Lady Bowring.—Her death.—Divorce and Matrimonial Causes Act 20 and 21 Vict. c. 85.—Ordinance No. 5 of 1858.



Return of Mr. Anstey from leave.

MR. ANSTEY returned from leave in India on the 13th December per P. & O. steamer *Cadiz*, and at once resumed the duties of his office. He returned before the expiry of his leave.*

Attempt to bribe him.

A day or two after his return, an attempt was made by the friends of a prisoner in Gaol to bribe him. Mr. Anstey had the man brought before the Chief Justice at the then pending Criminal Sessions—not for punishment, as he said, but for warning; for, as Mr. Anstey remarked, the offence had been committed in ignorance, compromise of felony, though condemned by the laws of England, being not only excused but encouraged by the laws of China. He had therefore brought the matter under His Lordship's notice, so as to secure his recommendation of a proposition that means be adopted by the Government for pointing out to the native population the discrepancies betwixt their and our laws. The Chief Justice signified his most cordial approval of such a step.

Compromise of felony not only excused but encouraged by laws of China.

Mr. Anstey's recommendation upon the subject.

The Chief Justice approves.

Apathy of the Chinese.

The apathy of the Chinese, as pointed out in 1853 in the case of a serious assault and robbery upon Captain Montgomery in which a by-stander stood on looking, without affording the slightest assistance and who was afterwards charged with misprision of felony,† was never more evident again than when Loong Ah Sai, a coolie, stood charged in the Supreme Court, on the 29th December, for attempting to drown a European. Though a large number of boat people and other Chinese were present when the offence was committed, not one of them offered the faintest help. The Government issued a notification on the 1st January, 1858, warning "all registered boat people that it was their duty on witnessing assaults, robberies, or similar outrages to assist, so far as it may be in their power, the parties attacked, and not to push off from or neglect to return to the shore, *or in any way show a culpable indifference as to the result.*" This warning was as valuable as preaching in the desert, for it is one of those characteristics peculiar to the Chinaman which nothing will eradicate.‡

Loong Ah Sai charged with attempt to drown a European.

Warning of Government to boat people witnessing offences to render assistance.

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* See *antè* Chap. XIX., p. 439.
† See *Antè* Chap. XIV. § I., p. 334.
‡ See further on this subject, Vol. II., Chaps. LXXII., and LXXXIX.

Chap. XX § I. 1857.

The admirable suggestion of Mr. Anstey, however, to point out to the Chinese the difference between their own laws and our own as regards the compounding of felony, although it met with the full approval of the Chief Justice, was as a matter of fact never given effect to, but so long afterwards as in November, 1880,* whether as an endeavour again to arouse the Chinese as to their sense of duty as citizens to render assistance whenever it was needed of them, or for whatever reason not recorded, the Government issued a notification in English and in Chinese setting forth the law regulating the arrest of offenders by private persons. What was the result of this notification it requires no clear-headed person at all acquainted with such a people as the Chinese and the migratory nature of the population of Hongkong, to foresee.

Government Notification in 1880, on the law regulating the arrest of offenders by private persons.

Marriage of Mr. Kingsmill, barrister.

On the return of Mr. Anstey from leave in India, Mr. Kingsmill had to relinquish his temporary position of acting Attorney-General. Four days afterwards, the following interesting event is to be found recorded in reference to him :—

"*Marriage.*—At St. John's Cathedral, Victoria, Hongkong, on the 17th December, by the Right Reverend the Bishop of Victoria, Henry Kingsmill, Junior, Esq., barrister-at-law, eldest son of Mr. Henry Kingsmill, of Sidmonton, in the county of Wicklow, to Frances Elizabeth, eldest daughter of the late Mr. Benjamin Warren, of Gloucester Terrace, Hyde Park, London."

Escape and capture of the notorious convict Ho Ah Chee.

An important capture was effected at this period when a notorious burglar named Ho Ah Chee, who had twice escaped from prison, fell into the clutches of the law again. The last time, he was under sentence of transportation for fifteen years for burglary committed in June last, and was to have been sent to Labuan in the *Annie* in August last.† Instructions had been given some days previously that none of the convicts to embark should be sent out on the roads; but Ho Ah Chee not only managed to evade the order the day before the ship sailed, but effected his escape—it was thought in a sedan chair provided for that purpose by his wife. Within ten days after his escape, he broke into a house and secured $200 and was living quietly in West Street. Taipingshan, when the authorities, hearing of his whereabouts, arrested him. At the Criminal Sessions held on the 29th December, he was sentenced to two years' imprisonment, at the expiry of which his former sentence was to take effect.

Improvements in the Gaol under Mr. Inglis.

Referring to the Gaol it may here be said that great improvements had of late taken place since the appointment of Mr. Inglis as Governor of the Gaol,‡—a marked contrast as compared with the past. Every prisoner had now his allotted task

* See Vol. II., Chap. LXXII.
† *Antè* Chap. XIX., p. 440.
‡ *Antè* Chap. XVIII., p. 428.

and no one was allowed to remain idle; until very recently, the prisoners were in a measure left to the freedom of their own wills, and contractors had to be engaged for every trifling bit of work that had to be done or repairs to be made within the prison walls. With Mr. Inglis' advent not only were the rules of the Gaol rigidly enforced, and the prison become a model of order and cleanliness, but also (besides the convicts employed in out-door labour) gangs of prisoners were organized consisting of bricklayers, blacksmiths, carpenters, and others, and every description of work done by the convicts themselves, under the personal supervision of the Governor of the Gaol. Chap. XX § I. 1857. Ch. XX § II.

On the 1st January it was notified that, in consequence of the office of Assistant Superintendent of Police having been abolished,* the Governor had appointed Mr. A. Grand-Pré to be "Collector of the Police and Lighting Rates"—a position, it was said, which much better fitted him. The abolition of the Assistant Superintendentship of Police was, no doubt, owing to Mr. Caldwell having been taken into the service again, and therefore through economy, as on Mr. Caldwell's re-employment† he relinquished Police duties and had been given a better and higher position, with corresponding emoluments, than what he previously held or drew. On the 8th January Mr. Alfred Weatherhead was gazetted Clerk of the Supreme Court. 1858. Office of Assistant Superintendent of Police abolished. Mr. Grand-Pré appointed 'Collector of Police and Lighting Rates.' Mr. Weatherhead appointed clerk of the Supreme Court.

For the first time in the history of the Colony, the proceedings of the Legislative Council were published, on the 9th January, in *The Government Gazette* of that date. This was a marked improvement on the past, and public opinion now went further, and again demanded‡ that the meetings of the Legislative Council should be held with open doors. Proceedings of the Legislative Council again asked to be held with open doors.

Accordingly a motion in the Legislative Council, on the 11th January, recommending the admission of strangers to the sittings of the Council on the introduction of members, was unanimously agreed to, and the Governor engaged to forward the same to the Secretary of State and to solicit his approval thereof. This approval was afterwards received, and orders of admission to the Press were issued on the 10th June. Motion in the Legislative Council for admission of strangers forwarded to Secretary of State. Orders for admission to the Press issued.

The Legislature, on the 11th January, passed Ordinance No. 1 of 1858, further improving the law of criminal procedure in respect of informations and indictments. Ordinance No. 1 of 1858.

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* The first Assistant Superintendent of Police was Mr. Caldwell (*antè* Chap. V. § II., p. 128) who resigned the appointment in July, 1855, when he was succeeded in that position by Mr. Grand-Pré (*antè* Chap. XVI. § I., p. 361).

† *Antè* Chap. XVII. § I., p. 408.

‡ See *antè* Chap. XVII. § I., p. 406.

Ch. XX § II.

1858.

**Unsatisfactory state of affairs in the Supreme Court.**

Delays in the hearing of causes in the Supreme Court, due to one cause or another, now began to be talked about, and innumerable had been the complaints on all sides and amongst the Chinese especially of the extortionate charges of the attorneys.* The unvarying reply to the complaints as to the lawyers' charges apparently was that the aggrieved party could always have their bills taxed, but unfortunately it was not customary then for the attorneys to tender bills to their Chinese clients, though in some isolated cases presumably it may have been done—the practice having been to name a certain sum for which the attorneys would undertake a case, though they managed generally to add a supplementary item to the account, especially when their client proved successful. Whether this system was in accordance with the rules of Court was not known, but the Chinese knew little about the taxing of costs. But the subject to which attention was more particularly drawn was a custom which had crept in, under the Summary Jurisdiction of the Court, of postponing cases from month to month, to the frustration of justice and manifest injury of the party having right on his side, or, which was as bad, referring them to arbitration instead of deciding them in Court.

**Complaints of the Chinese against extortionate charges of attorneys.**

**Frequent postponements and referring cases to arbitration.**

**Cases adjourned at request of attorneys without assigning reason or for want of an interpreter.**

Cases occasionally occurred which of necessity were delayed for a Sessions or two, but it was expected that in such cases the Chief Justice would assure himself of the necessity for the postponement. But what ought to have been the exception had now become the rule, and at every sitting of the Court, hearings were postponed at the simple request of the attorneys, no reasons for such postponement or at all events no proofs being demanded at their hands. Often enough also cases were adjourned for want of an interpreter.†

**Complaint at cases being frequently referred to Mr. Caldwell as arbitrator.**

**The Chief Justice taken to task.**

A similar complaint applied to arbitration. The cases were by no means apparently so complicated as they were made to appear; and had the attorneys taken the trouble, which they professed they had, the statements to be laid before the Judge for decision would have been promptly enough simplified. Cases were frequently referred to Mr. Caldwell, the Protector of Chinese, as arbitrator, either by order of the Chief Justice or at the request of the attorneys or of the parties themselves. The Chief Justice, it was said, enjoyed a very handsome salary for the performance of his duties, and though Chinese accounts were sometimes rather intricate and confused, a little trouble on the part of the lawyers would have enabled His Lordship to arrive at the merits of the case, as readily at all events as Mr. Caldwell; nor was

* On this subject, see *antè* Chap. XI., pp. 219, 238; also Chap. XXII., *infrà*, and Vol. II., Chap. XXXVII.

there any reason why the Chief Justice, arduous as his duties were, should have shifted them from his own shoulders to those of one less able to bear them, and whose qualifications to decide questions of law, and even of equity, were, as was very properly remarked, by no means of the highest order. Besides, there was no necessity for clients to be put to additional expense in such matters, *for it was not to be expected that Mr. Caldwell laboured without pay.* The Court and lawyers' fees were heavy enough without those of an arbitrator being superadded. In a recent case where the sum at issue was about $250 and the fees in which amounted to $60, it is recorded that more than one-half had gone to Mr. Caldwell! This was certainly scandalous, and it was therefore high time that attention should be drawn to the subject.

Mr. Caldwell's heavy fees.

It was not supposed that the Chief Justice had given the matter much consideration, but as pointed out, for each delay an additional expense was incurred in the shape of fees for 'attendance,' 'notices,' etc., all of which fell heavily upon the losing party. One thing, it was asserted, the Chief Justice could depend upon was, that the Chinese had perfect confidence in the justice of his decisions, and that, for or against them, they in all cases preferred his verdict to that of any inferior officer; and as for postponements, the uncertainty was more annoying in many instances than an adverse decision would be. The Chinese litigants and others not unnaturally therefore hoped to see in future postponements of cases in Summary Jurisdiction refused without sufficient cause shown, and that the Chief Justice as a rule would decide the cases himself without reference to an arbitrator, even though such arbitrator were invested with the honorary title of "Protector of Chinese." Thus summarized would appear to have been the grievances against the Supreme Court and the attorneys at this date.

The Chinese and their confidence in Chief Justice Hulme.

Ordinance No. 3 of 1858, regulating proceedings in the Supreme Court, by section 14, however, partly remedied the evils complained of as regards the hearing and postponement of cases in Summary Jurisdiction.

Ordinance No. 3 of 1858, s. 14.

In consequence of the dissatisfaction existing in regard to the legal profession, as alluded to above, the Attorney-General had been approached upon the subject by the majority of the barristers in practice in the Colony, and the question of amalgamation suggested to him as a possible means of appeasing the public mind in a matter wherein they felt the greatest concern.

Dissatisfaction in respect of the legal profession.

The Attorney-General approached upon the question of amalgamation of the profession.

The following was the letter addressed to Mr. Anstey upon the subject, with his reply to the same :—

Hongkong, January 8, 1858.

Sir,—We beg to call your attention, as the leader of our profession in this

The barris-

Ch. XX § II. — 1858. to Mr. Anstey upon the subject.

munity at the rules which impose separate duties upon barristers and attorneys. Practical experience has convinced us that there does not exist here as at Home a necessity for the division of the two branches of the profession, and we are, therefore, willing to give up our peculiar privileges as barristers, and, by consenting to an amalgamation of the profession, bring about a solution of the existing difficulty.

We shall be glad to find that you concur with us in our opinion, and should such prove to be the case, we request you to take such steps as you may deem necessary for carrying out a measure, which may relieve the community from a burden which need not be inflicted upon it, and which in no way raises the character or improves the real interests of the legal profession here.

We have the honour to be, Sir, your most obedient servants,

W. T. Bridges.
John Day,
Henry Kingsmill.

The Honourable T. C. Anstey, Esq.,
*H. M.'s Attorney-General,*
*&c., &c., &c.*

Mr. Anstey's reply.

Mr. Anstey's reply was as follows :—

Attorney-General's Office,
Hongkong, January 9, 1858.

Gentlemen,—Your letter of yesterday is before me. I am not aware that any "dissatisfaction is felt or expressed by the community at the rules which impose separate duties upon barristers and attornies,"—still less that the feeling has been "general."

In a pecuniary sense, the division of the two branches "of the profession" deserves to be styled by you "a burden inflicted upon the community." But I need not say that the "burden" may be accompanied with advantage. It is no small advantage to possess that double check and mutual control which is the client's security against the occasional incapacity, carelessness, or extortion of the legal adviser.

Nevertheless, if the advantage be wanting, the burden ought not to be, and, if the "practical experience" to which you allude shows that, in this Colony, the client has not the security in question, it is impossible to resist your conclusion, that there does not exist here, as at Home, that necessity for "the division of the two branches," which, as I have said, alone can justify us in maintaining it.

In *that* view, I, "as leader of the profession," incline to accede to the demand which you personally (for Mr. Green's subscription is wanting,) address to me in that capacity, and, I am quite willing, if both branches concur, to take some trouble to carry the proposal into effect.

That concurrence is indispensable before I can proceed. It must not be forgotten that the division which it is now your purpose to obliterate was the act of one of yourselves : arising immediately from the demand of exclusive audience for the bar, made by a barrister, and ordered by the Court.*

Therefore, if I proceed without the concurrence of the other branch, it will be not unfairly said, that the profession has been divided for the sake of the bar alone, and is now to be re-amalgamated in the same interest, and that the rights and feelings of that respectable body, the other branch of it, are thus made the victims of the cupidity and caprice of the branch to which you and I belong.

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* Undoubtedly this had reference to Dr. Bridges' application to the Court in 1851, immediately after his admission to the local bar. Mr. Anstey did not come to the Colony till long after, but with his acuteness he must have found this out afterwards. See *ante* Chap. XII. § II., p. 302.

I shall consequently feel obliged by your attendance at a meeting of the profession at large. With the Governor's sanction, I hope to be able to convene that meeting by Notification in to-day's *Gazette*.

The subjects to be discussed will naturally embrace—

1. The propriety of the suggested change ;
2. The practical method of effecting it ;
3. The future status of the two branches ;
4. The mode of securing the expected advantage to the community ;
5. The precautions to be taken for its protection against wrong ;

And whatever topics are incidental to these. I shall be glad to hear your further views if you have any to offer.

I have the honour to be, Gentlemen, your most obedient servant,

T. Chisholm Anstey,
*Attorney-General.*

The Hon. W. T. Bridges, Esq., D.C.L.
John Day, Esq.
Henry Kingsmill, Esq.

The correspondence communicated by Mr. Anstey to the Law Society.

The above correspondence Mr. Anstey considered it his duty to communicate to the Hongkong Law Society,* and the following is the letter which the Secretary to the Society addressed to the Attorney-General in reply :—

The reply of the Secretary to the Law Society.

Hongkong, 11th January, 1858.

Sir,—I am instructed by the Hongkong Law Society to acknowledge and thank you for your communication to us of the contents of the letter of Messrs. Bridges, Day, and Kingsmill to you, dated the 8th instant, and of your reply of the 9th instant.

The Society denies altogether the truth of the allegation that dissatisfaction is generally, if at all, felt or expressed by the community at the rules which impose separate duties on barristers and attornies, but on the contrary asserts, that such separation is approved of, and is beneficial to, the community ; and that as much necessity exists in Hongkong for the division of the two branches as at Home, and perhaps a greater. The Society dissents entirely from the amalgamation, for reasons which will, if necessary, be fully stated ; and trusts that no proposition, having that object, will be entertained by you with a view to legislation on the subject.

I have the honour to be, Sir, your most obedient servant,

Edward K. Stace,
*Secretary to the Honghong Law Society.*

Accordingly a meeting of the two branches of the profession was decided upon, and the Attorney-General issued the following notice which appeared in *The Government Gazette:*—

NOTICE.

The Attorney-General requests the attendance of *all the members of either branch of the legal profession* at the Court House, on Tuesday next, the 12th instant, at the hour of noon, to take into consideration a certain proposal which has been laid before him, affecting the relative positions in future of barristers and solicitors within this island.

Attorney-General's Office,
Hongkong, 9th January, 1858.

Ch. XX § II. 1858. Meeting of the two branches of the profession.

Pursuant to the foregoing notice, the meeting was held in the Court House on Tuesday, the 12th January, at noon, there being present, Mr. Anstey, the Attorney-General, Dr. Bridges, the acting Colonial Secretary, Messrs. Day and Kingsmill, *barristers*; and Messrs. Gaskell, Parsons, Stace, Cooper Turner, and Moresby, *solicitors*. A letter was handed in from Mr. Green to the effect that he was too unwell to attend, but he, while admitting the necessity for a change of some kind, dissented from the proposal of his learned brethren.

The following is a condensed report of the proceedings at this meeting, taken from the records of the time, and which cannot fail to enlist the utmost interest :—

Mr. Anstey in the chair.

The Attorney-General, having been requested to take the chair, invited the discussion of the questions for which the meeting was summoned.

Dr. Bridges said that he did not understand that there was to be any discussion, still less that any decision by vote was to be come to, and as the bar would plainly be out-voted, he should withdraw if any question were put to the vote.

The Attorney-General observed that it was clearly intended that discussion should take place, his letter of the 9th instant expressly using the word 'discussed' and stating the subjects.

Mr. Gaskell moved the following resolution :—"That there does exist here as at Home a necessity for the division of the two branches of the profession." He observed that the attorneys were also notaries, and that it was desirable that the two branches of the profession, whose functions were essentially different, should be kept distinct. The attorney's time was fully occupied in the numerous details of a general practice, and he had not time to acquire that knowledge which was requisite for discharging properly the business of a barrister.

Dr. Bridges said that the business of attorney and barrister had been carried on most satisfactorily in this Colony by one gentleman; and he knew an instance in which great injury was done to a client because etiquette prevented the solicitor advocating his case before the Court.

Mr. Parsons seconded Mr. Gaskell's resolution. In answer to Dr. Bridges he said that exceptions only proved the rule. "In the multitude of counsellors there was safety."* Historical evidence was entirely in favour of the division of the two branches. The only countries where British law, or what was analogous, prevailed, in which nominally an amalgamation of the two branches had been made, were the United States and Canada, but practically there was the same division of labour there as here; a lawyer was called counsellor and attorney. But in fact one set of men devoted themselves to counsellor's business and another to attorney's business. He denied that the community here desired the amalgamation and contended that it would be an injury to them. Doubtless it was a burden to have to pay two lawyers instead of one, but was not the advantage more than commensurate—two heads were better than one, and the mutual check tended to greater security

* A quotation from *Prov.* XI. 14; XXIV. 6.

as well as greater accuracy. If the amalgamation were effected unprincipled barristers might go into partnership with unprincipled attorneys, and instead of the mutual check there would be a mutual combination to pluck the community. Again, it was a benefit to the Colony to have a periodical infusion of lawyers from Home, which the amalgamation would tend to impede. A barrister would not come to lower his rank; an attorney would not come to compete with a barrister in a branch which he had never learned and for which he was not educated. But, assuming that a fusion of the two branches took place, could an equality be established? The bar offered to give up its privileges, but could it give up its *privileges?* It had a *status* here as elsewhere which no Ordinance could disturb. Would the offices of Chief Justice, Attorney-General, Colonial Secretary, or Chief Magistrate be open to the attorneys? Assuredly not. The attorneys in full confidence had introduced barristers to their clients, as possessing superior qualifications, not supposing that they were thus furnishing clients to the barristers to their own loss, which would be the case if the amalgamation took place? Again, would the barrister put off his gown and bands, or would the attorney assume those habiliments? Would the barrister consent to be disbarred? He had merely glanced at some of the effects of an amalgamation, the meeting would readily work out the result into such details as would plainly show that a great social evil would be caused by destroying the existing division of the two branches. But the public interest was paramount, and if the opinion of the community were clearly expressed upon a plain case, stating the advantages and disadvantages of amalgamation, of course, the profession must give way and fight for their living as best they might, or evacuate a Colony which had no further occasion for their services. With these observations he left it to the meeting to determine the question raised by Mr. Gaskell's resolution.

Mr. Day said that Mr. Parsons appeared to be under a misapprehension that the bar wished to injure the attorneys; such was far from being the case; the bar had been continually assailed by the public press as being the cause of ruinous law expenses, and in vindication of themselves they came forward and said: we will waive our privileges as barristers, if you place all on the same footing. They considered that the attorneys would be benefited. He (Mr. Day) was placed in an anomalous position; he had always acted on strict professional etiquette, and would not receive instructions except through an attorney. Repeatedly he had refused briefs direct from the merchant, the consequence was that he heard no more of them, they having been accepted by his less scrupulous professional brethern. He did not wish for an amalgamation, but he did wish for an arrangement by which all should act on one principle.

Mr. Kingsmill did not wish to interfere with attorneys' business, much of which he would rather not be compelled to do.

Dr. Bridges, barrister and acting Colonial Secretary, said that, it did not follow, because an attorney offered a retainer of only ten dollars, that it was offered on behalf of his client.

The Attorney-General thought that every gentleman of the bar was bound to assume that it was so offered. Else it would be necessary for the barrister to go to the client, behind the attorney's back, and say, "Sir, did you authorize your attorney to offer me only what the Ordinance allows him to offer?" A question which no gentleman would put. While on this subject he (the Attorney-General) would say in reference to Mr. Day's observation on the odium excited by the indolence and rapacity, real or imaginary, of the profession, that the profession had it in their power to remove all just cause of complaint without resorting to the doubtful measure of amalgamation. There was, in the first place, that remedy which lay within the reach of every man,

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to work conscientiously, not to be exacting overmuch. Let the bar in particular make that their rule. Let them endeavour to obey the Ordinance, instead of setting themselves contumaciously to withstand it. If the law says that $10 shall be the retaining fee, why extort $25 from client and attorney.* He (the Attorney-General) did not preach what he did not practise. At all events it was preposterous, he thought, for gentlemen, who disdained to follow his example, to seek any other way to the contentment of the public expectation.

In the next place, however, if change there must be, he thought that something far short of amalgamation would meet the exigency. He was quite prepared, if the attorneys wished it, to propose that the client—if he so thought fit—might have audience in Court through his attorney. Further than this he did not at present like to go, at any rate not to the length of the proposition before the meeting as to which, by the way, he had received since the chair was taken, a letter from Mr. Green of this bar expressing his repugnance to it. It was, indeed, a most dangerous one; nor ought it to be adopted without ample securities against oppression and fraud. It would be necessary, for instance, to declare barristers incompetent to form professional partnerships *inter se* or with attorneys. Their fees must be subjected to taxation, like attorneys' costs. Double fees or costs must be prohibited, etc., etc., and, when all was done, it would still be found that, then as now, your real reformer is he who reforms himself.

The Acting Colonial Secretary (Dr. Bridges) said that he did not care what the Ordinance said—he meant to draw his $25 retainer; $10 would not suit him. The Ordinance merely said that more should not be allowed on taxation. He had obtained the opinion of the Chief Justice that he was right.

Mr. Gaskell observed that the same Ordinance having abolished the distinction of acts as between party and party, and as between solicitor and client, it followed that if Dr. Bridges were to have his way, the $15 disallowed on taxation of his retaining fee would have to come out of the attorney's pocket.

Dr. Bridges made no answer, but rose to leave the meeting.

The Attorney-General then put the resolution which was carried *nem. con.*, the barristers not voting against it, and the attorneys being unanimous in favour of it.

The thanks of the meeting having been presented to the Attorney-General, that gentleman left the chair and the meeting broke up.

The result of the meeting.

Ordinance No. 3 of 1858.

Ordinance No. 12 of 1858.

Taken in conjunction with the agitation for amalgamation which again sprung up in May, this year,† undoubtedly as one result of this meeting, Ordinance No. 3 of 1858 regulating proceedings in the Supreme Court and which, *inter alia*, dealt with taxation of costs, and Ordinance No. 12 of 1858 "for Practitioners in Law," promulgated and passed on the 22nd March and 12th July respectively, must be considered as having been meant as a possible or partial remedy of the evils complained of.‡

* In regard to this point, it may be mentioned that a summons in chambers was taken out by the barristers calling upon the solicitors to show cause why they should not pay the sum of $25 retaining fee instead of $10. It came on for hearing before the Chief Justice on the 7th January. After hearing Dr. Bridges and Mr. Parsons *contrà*, the Chief Justice suggested the matter should be referred to the Law Society, and the matter stood adjourned *sine die*. On this subject see also *antè* Chap. XII. § II., p. 309, and Ordinance No. 14 of 1856, sch. II.

† Chap. XXII., *infrà*.

‡ See further Vol. II., Chap. XXXVII., as to Ordinance No. 12 of 1858.

Robbery and murder in the shop of Mr. Glatz, watchmaker.

On the evening of Tuesday, the 26th January, the shop of Mr. Glatz, watchmaker in Queen's Road, was the scene of a dreadful murder, the victim being a young French boy named Hyacinthe Glatz, the adopted son of Mr. Glatz, who was thirteen or fourteen years old and who had been left in charge of Mr. Glatz's shop. On the latter's return after a short absence from his shop, he found the boy in a back room dead with his throat cut. The shop had been plundered of watches, rings, and other articles of jewellery to the value of several thousand dollars. Suspicion fell upon the shop coolie, Look Ah Song, who had disappeared. By the exertions of the Police the murderer was shortly afterwards captured in Macao and brought back.

Capture of the murderer, Look Ah Song.

Interesting speech by Mr. Anstey upon the state of crime in the Colony.

At the opening of the Criminal Sessions on Friday, the 29th January, the Attorney-General, Mr. Anstey, rose and said he had to inform the Court that the murderer of the unfortunate French boy had been captured and was then before the Coroner's jury, that he had acknowledged himself guilty, and that he intended to adhere to that acknowledgment and plead guilty at his trial in the Supreme Court. The Attorney-General proposed, with His Lordship's permission, to arraign the prisoner at the bar of the Court that day, and he had therefore taken the liberty, without consulting His Lordship, to draw an indictment. The verdict of the Coroner's jury would be delivered in about an hour, and the indictment would go upon that. The Attorney-General further said that this would add nothing to the labours of the Session which, he was happy to say, would be a very short one, as it consisted, excluding the case of murder, of only four cases. It would be in His Lordship's recollection that the Sessions had been very light for some time past;—the circumstance had also attracted his (the Attorney-General's) particular attention, and he was particularly struck with the very small number of cases of piracy, which formerly constituted the bulk of the calendar. On this he (Mr. Anstey) put himself in communication with the proper authorities, and he was furnished with the following facts: during the first eight months of last year one hundred and ten cases of piracy had been reported to the Police—in the last four months of the same year, only eighteen cases had been reported. During the first eight months fifty-two prisoners were in custody charged with piracy, while during the last four months only nine prisoners were so charged. The numbers spoke for themselves; but he felt bound to congratulate the Court on this happy result, as it would be in His Lordship's recollection that early in September, the first of the four last months, Ma Chow Wong, "the notorious putter up of piracies, had been tried and convicted, to which the decrease was in a great measure attributable." As regards the latter fact undoub-

Attorney-General congratulates the Court upon reduction of piracy cases and attributes same to conviction of Ma Chow Wong.

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tedly Mr. Anstey was correct, for this blow had cut off the scheming head without which the members were powerless.

Conviction and execution of Look Ah Song.

On being arraigned, Look Ah Song, as announced by the Attorney-General, pleaded guilty. The Chief Justice remanded the prisoner till next day (the 30th) when he was brought up for sentence. Mr. Hulme observed that he had carefully read over the depositions with a view to discover if there were any extenuating circumstances in the case, but could find none, and after a short and emphatic address sentenced the prisoner to death. The execution took place on Wednesday, the 3rd February, at noon. It may be mentioned in reference to this prisoner that he had to be carried in and out of the Court, in consequence of a fall sustained by him while leaping from a house in Macao at the time of his arrest, and from the effects of which he was still suffering. When arrested, there were found in prisoner's box sixty watches, a considerable quantity of jewellery, nineteen pawn-tickets referring to clothes, ear and finger rings and other articles the proceeds of the robbery and which he had pawned, besides two knives covered with blood.

Case of Teep Ching Leu *v.* Lum Ah Kun, damages for false imprisonment.

On Thursday, the 28th January, a Sheriff's Court was held to assess damages in a case of false imprisonment, Teep Ching Leu *v.* Lum Ah Kun,—wherein judgment had been allowed to go by default. The case arose out of a charge of theft brought by the defendant and under which the plaintiff was apprehended by the Police, and held to bail, himself and two others in $50 each. The charge, if well founded, was not proved, and the case was dismissed by the Chief Magistrate, hence the action for damages set down with costs at $2,000. Mr. Anstey appeared as counsel for plaintiff, with Mr. G. Cooper Turner as his attorney. Mr. Day was counsel for defendant, Mr. Parsons being his attorney. The jury returned a verdict against the defendant for forty shillings costs of writs of inquiry, $100 for lawyers' fees, and $10 to account of some other special charge, but in reality no damages to the plaintiff personally. So much for the merits of the case, but there was one circumstance connected with it which was well worthy of notice. No sooner had the jury by their verdict recorded their disbelief of the plaintiff's statements and those of his witnesses, than Mr. Anstey in his private capacity, as the plaintiff's counsel, had the defendant taken into custody on a charge of perjury! The jury happening to hear of the man's apprehension unanimously signed a protest against such an unjust and high-handed proceeding, stating their disbelief that the apparent discrepancies were entirely attributable to misinterpretation. At all events there is little doubt that the defendant would actually have

Extraordinary conduct of Mr. Anstey, counsel for plaintiff, in his private capacity.

Mr. Anstey causes the defendant to be taken into custody for perjury.

The jurors protest and allude

been put upon his trial for an offence of which, in the belief of the six jurymen who decided the case, he was not guilty. The following was the letter they addressed to Mr. Anstey upon the subject :—

Hongkong, 1st February, 1858.

To the Honourable THOMAS CHISHOLM ANSTEY, Esq.,
*Attorney-General.*

Sir,—We learn with surprise and regret that you have caused the defendant in the case Teep Ching Leu and Lum Ah Kun to be arrested for giving contradictory evidence before the Sheriff, on the writ of inquiry to assess damages.

The evidence on both sides was certainly far from satisfactory, but it struck us that a large amount of blame was to be attached to the very defective interpretation. Whether the interpretation of the evidence in the Police Court to which reference was so often made was better or worse, it is not in our power to say ; but from everything we can learn, that however defective the interpretation may be, in the Supreme Court, it is much more so in the Chief Magistrate's Court. You, Sir, will also remember that you had very serious fault to find with the interpreter, for mistaking or mistranslating your questions, not only on the cross, but on the direct, examination.

Taking all this into consideration, we trust you will not object to withdraw the prosecution against the defendant Lum Ah Kun.

If the Jury did not think that their functions as jurors had ceased, they would have thought it their duty earnestly to request you to draw the attention of the proper authorities to the very defective state of the interpretation in the Colony.

It was the intention of one of the Jurors to have proposed the matter to the other Gentlemen of the Jury, but as he supposed that it would be a breach of decorum to address you as Attorney-General while you were merely acting as counsel in a private case, he postponed doing so.

Trusting that you will accede to our request,—We have the honour to be, Sir, your most obedient servants,

R. B. SHERRARD,
D. LAPRAIK,
P. RYRIE,
H. F. EDWARDS,
CHAS. JAMESON,
W. F. BEVAN,
*Jurors in the Case.*

to defective interpretation.

In the meantime Mr. Anstey had left for Canton on a visit, and where by the way, being without a pass, he was arrested by the Provost Marshal and otherwise submitted to considerable inconvenience. On his return to Hongkong he placed himself in communication with the military authorities relative to his arrest, but with no satisfactory results to himself.*

Mr. Anstey leaves for Canton.

Mr. Anstey's arrest.

On the 5th February Mr. Anstey despatched the following letter to the jurors in reply to their protest mentioned above, showing that he had thought better of the matter :—

His reply to the protest of the jurors.

Attorney-General's Office,
5th February, 1858.

Gentlemen,—On my return from Canton, I find your letter dated 1st

* See *Parliamentary Papers on Hongkong* (31st March, 1860) p. 236.

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1858. It is no discourtesy towards you to state, that I have no doubt of the guilt of the man [Lum Ah Kun] whom I caused on Saturday last to be committed for perjury.

But as *your unanimous opinion* to the contrary is at least equivalent to a *verdict of acquittal* by a jury of strangers to the case, I, of course, consent to withdraw the prosecution.

In all that you say on the subject of the deficiency of proper interpreters I quite concur, and I accede to your wish that I should represent it to Government.

Your letter will accordingly be forwarded to the proper quarter.—I have the honour to be, Gentlemen, your obedient servant,

T. Chisholm Anstey,
*Attorney-General.*

R. B. Sherrard, Esq., *Foreman*,
D. Lapraik, etc., etc., *Jurors*.

The man was discharged the following day. If Mr. Anstey —not in his character as a professional man conducting the case on behalf of his client, the plaintiff, but officially—felt assured that the defendant had really perjured himself, he had no right whatever to discharge him upon the protest of any man or body of men, but was bound as Attorney-General to press the charge; if, on the contrary, he had the slightest doubt upon the subject, he might well have hesitated before taking such a decisive step, and thereby subjecting himself to a charge of what was construed as excessive zeal in the discharge of his duty. In no instance was the insufficiency or inefficiency of the staff of interpreters more clearly exemplified,* for not only was the cause of justice jeopardized, but a poor unfortunate man might have been sentenced to a long imprisonment, through the blundering of a man acknowledged by himself to be incompetent for the discharge of his office.

The question of interpretation treated.

Discharge of the defendant.

Criticisms.

Complaints had arisen against the fee paid for marriage in Hongkong to the Chaplain and Clerk. It now appeared that the payment of fees was quite optional, the following letter from the Attorney-General to the Colonial Secretary, expressing the grounds of his opinion with brevity and clearness:—

Complaints against the fee paid for marriage to the Chaplain.

Mr. Anstey's opinion.

Attorney-General's Office,
February 17, 1858.

Sir,—I have the honour to return Bishop Smith's letter of the 15th instant (forwarded under cover of yours of yesterday, No. 94).

My opinion upon the question now presented by the Bishop to His Excellency, was certified to the Governor under date the 29th December, 1857; and it cannot be affected by any documentary evidence short of a Parliamentary or Colonial enactment.

Ecclesiastical fees are levied in England, either by statute or by custom. Statutes in such cases have no extra-territorial vigour, but are strictly confined to the realm to which they relate. Custom in Hongkong can have no existence, for the occupation is one of the most recent facts in history, and the custom could not have preceded that.

* For previous references as to interpretation, see *antè* p. 454, and also Chap. XVI. § II., p. 381, *note*.

I am therefore clearly of opinion, that the receipt of any fees on marriages by the officiating minister, is a matter unauthorized by law; that the law does not forbid his receiving them by way of free gift; but that he ought not to solicit them, nor can he enforce their payment *in invitos*.—I have, etc., etc.,

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T. CHISHOLM ANSTEY,
*Attorney-General.*

The Honourable
The Acting Colonial Secretary.

Admission of Mr. Hazeland, as an attorney of the Court.

He joins Mr. Cooper Turner, the Crown Solicitor.

On the 16th February Mr. Hazeland, the solicitor, arrived in the Colony, by the *Wild Flower* which had left London on the 20th September, 1857. He was admitted an attorney of the Court the next day, and on the 15th March following he joined Mr. G. Cooper Turner, the Crown Solicitor, who was a relation of his, as partner.

Wong A Shing, the first Chinese juryman in Hongkong.

The first occasion upon which the name of a Chinaman appeared on the jury list was in that prepared by the Registrar for the present year and wherein figured the name of Wong A Shing, a well-known and respected Chinaman. At a meeting of the Legislative Council on the 24th February, a discussion followed, ending in the name being retained and the list adopted. Mr. Wong A Shing was therefore the first Chinaman to whom the privilege of serving as a juryman was extended.* He is, it may be mentioned, still alive, and was for a time on the roll of interpreters of the Supreme Court, and in 1884 became a member of the Legislative Council.†

Mr. Anstey asks for Police protection.

In consequence of an application from Mr. Anstey, on the 26th February, for Police protection, induced by his fear that the position he held as Crown Prosecutor may have engendered the spirit of revenge amongst some of the worse classes of the inhabitants, he was informed by the Governor on the 2nd March that, if public convenience admitted of it, a policeman would be granted for the protection of his neighbourhood. As will be seen hereafter, consequent upon the refusal of the Governor to comply with his request, Mr. Anstey addressed the Secretary of State.‡

Conviction of two Chinese, one a pawnbroker, for larceny and receiving stolen property.

Heavy sentence of transporta-

The Criminal Sessions for March opened on the first of that month. Tong A Sin and Chun A Cheong were charged with larceny of a watch. The second prisoner was a pawnbroker. The jury found the first prisoner guilty of stealing the watch and the second of receiving it, well knowing it to have been stolen. The Court, addressing the prisoners, said this was a case which it was called upon to visit with the utmost severity, especially as against the receiver, remarking, as had done Mr. Anstey, that were there fewer receivers, there would be fewer thieves, and sentenced the first prisoner to fifteen, and the second, the

* See also Chap. XXVI., *infrà*.

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tion against the pawnbroker, the receiver.

The pawnbroker's sentence is commuted without the Attorney-General being consulted.

The Chief Justice and the Executive.

pawnbroker, to fourteen years' transportation. The latter, on hearing the sentence, asked that he should be executed instead, and it was only by the united exertions of half-a-dozen policemen that he was removed from the dock. Through some outside influence, believed to be the recommendation of Mr. Caldwell, the sentence against the pawnbroker was afterwards reduced to two years' imprisonment. Mr. Anstey was not consulted in the matter, and the Chief Justice, though the petition had been referred to him, had reason to be dissatisfied afterwards with this interference with his sentence by the Executive.

Ordinance No. 11 of 1858.

This case may have had the effect of hurrying on the Ordinance No. 11 of 1858, dated the 6th July, which relates to the trade of a pawnbroker.

Escape of convicts from Gaol.

A turnkey the worse for liquor.

On the 3rd March three convicts escaped from Gaol. One of them was acting as servant to the turnkey, and through him the others got access to the tower where the turnkey lived, and from thence made their escape. Mr. Inglis, the Governor of the Gaol, was away on duty at the time and on his return found the turnkey the worse for liquor!

The validity of marriages in China.

Despatch from the Foreign Office.

The following was a despatch from the Foreign Office, regarding the validity of marriages of British subjects at Chinese ports, and the doubtful question as to the legality of the ceremony celebrated in Macao, which, as may be seen, was still doubted as being a Portuguese possession :*—

Foreign Office, March 9, 1858.

Sir,—I have had under my consideration, and have referred to the proper law advisers of the Crown, your despatches Nos. 452 and 7 of the 26th December and 9th January last, on the subject of the doubts which had arisen as to the validity of the marriages of British subjects at Chinese ports; and have to acquaint you, in reply, that the Statute 12 and 13 Victoria, Cap. 68, empowering a consul to solemnize marriages, does not affect the validity of, or in any way interfere with, any marriages which would have been valid independently of that Statute, in which category are marriages celebrated in China by ministers of the Church of England, according to the forms of that Church.

With regard to the case (specially referred to) and to the validity of marriages celebrated by a clergyman of the Church of England, and not under the Act 12 and 13 Victoria, Cap. 68, at Macao: if Macao is Chinese territory, and not a Portuguese possession, such marriages will be valid as being celebrated in China, a pagan country. If, however, Macao is a possession of Portugal, then it has a Christian law of marriage as its "lex loci," and marriages of British subjects must, in order to be valid, be solemnized there either in accordance with such "lex loci," or with the provisions of the Act above mentioned.—I am, etc.,

MALMESBURY.

Sir JOHN BOWRING,
etc., etc., etc.

* On this subject, see *ante* Chap. XI., p. 246, and reference there given.

1858.

Mr. G. W. Caine, Colonel Caine's son, appointed Secretary to the Superintendency of Trade, *vice* Morrison, on leave.

Mr. G. S. Morrison, Secretary to the Superintendency of Trade, proceeded to England on leave of absence on the 16th March, his place being taken by Mr. George Whittingham Caine, now First Assistant at the Amoy Consulate alluded to in this work in November 1854,* and who had but recently returned from leave in England. Mr. Caine was the eldest son of Lieutenant-Colonel Caine, the Lieutenant-Governor.

Ordinance No. 2 of 1858.

At a meeting of the Legislative Council held on the 17th March, it was ordered that Ordinance No. 2 of 1858, passed on that day and entitled "An Ordinance for licensing and regulating the sale of prepared opium," be published in English and *Chinese* in the next *Government Gazette*, for general information, which was accordingly done. This was the first instance on record where a local law was ever published in Chinese.

First Ordinance published in Chinese.

Motion of the Chief Justice that proceedings of Council be published as recorded in the journal of the Clerk of Councils.

At a subsequent meeting of the Council held on the 22nd of the same month, it was determined, on the motion of the Chief Justice, that the votes and proceedings of the Council should henceforward be published in the shape as recorded in the Journal kept by the Clerk of Councils, but the Governor reserved to himself the power of withholding from such publication any matters to which it might appear to him unadvisable to give publicity.

Ordinance No. 3 of 1858.

Ordinance No. 3 of 1858 was passed on the 22nd March, 1858. It was an Ordinance for regulating proceedings in the Supreme Court, and was much more favourable to the lawyers than the one previously in force. The principal point of interest seemed to be the increase of the jury from six to seven. One excellent provision of the new Ordinance was, that four clear days' notice from the service of the plaint must be given in summary jurisdiction cases before the hearing; and that no postponement would be allowed without twenty-four hours' notice having been given to the Registrar, the latter improvement upon the old state of affairs being no doubt in consequence of the complaints before referred to.†

The Crown against Mr. Y. J. Murrow for libelling the Governor, Sir John Bowring.

On Monday, the 19th April, the long pending case of the Crown against Mr. Yorick Jones Murrow, the editor of *The Daily Press*, whose name has already appeared in this work,‡ for libelling Sir John Bowring, the Governor, came off for trial before the Criminal Sessions. It had been postponed from the last Sessions owing to the alleged illness of the defendant. The Attorney-General, with Mr. Cooper Turner, the Crown Solicitor, represented the Crown, while the defendant was represented by Mr. Day as counsel, and Mr. E. K. Stace as solicitor. The

The interests of the firm of Jardine,

* See *antè* Chap. xv., p. 353, and reference there given.

Ch. XX § II. 1858. Matheson, & Co., in which the Governor had a son a partner.

libel charged was against Sir John Bowring's public and private character. It charged him in effect with lending his powers as a Governor to advance the interests of a local firm—that of Messrs. Jardine, Matheson, & Co., in which he had a son as a partner.*

The facts.

The Attorney-General stated the case to the jury, and said the defendant was charged with publishing a malicious libel, reflecting on the character of His Excellency Sir John Bowring, in his capacity of Governor of Hongkong. The libel itself consisted in an article which appeared in *The Daily Press*. Mr. Anstey here read the paragraph which was as follows :—

"It is well known that our Governor has a near relative in one of our eminent houses. The *Phœbe Dunbar*, a ship consigned to that house, was chartered by Government without any tender having been advertized, at an unheard-of rate. The same thing occurred in the case of the *Lancashire Witch*, also consigned to the same eminent firm. The steamer *Ava* was detained (at least it was so alleged on the authority of General Ashburnham) in order to enable a steamer belonging to the same firm to reach Calcutta first with important advices upon the opium market. The same influential establishment has enjoyed the exclusive privilege of having a special agent at Canton during the late occurrences, where they secured extensive premises before any rival could be in the field to compete with them. The notices of the removal of the blockade and regulations of trade, although placed in the Governor's hands to be made as public as possible, were on one occasion suppressed until after the departure of the mail, and another issued on the day subsequent to the date of the *Gazette*. We shall find the sequel will be, jobbery, favoritism, and dishonesty riding rampant, clean hands being wanted to interpose a salutary check on practices usually considered mercenary and disreputable."

Mr. Anstey then called the printer of the paper who proved the authorship of the defendant, and Mr. Joseph Jardine† who stated that the article was a tissue of falsehood from beginning to end. This was all the evidence adduced, and after the libellous article was put in and read, Mr. Day addressed the jury for the defendant, and in a very ingenious speech expatiated, it is said, largely on the liberty of the press, and the rights of our forefathers, and earnestly begged the jury not to forgo their rights, by their verdict. Continuing, Mr. Day said that it was impossible to bring the Government of this Colony into contempt, as the indictment alleged ; everybody knew it was contemptible enough, without the aid of the defendant. It was notorious that similar articles had appeared in all the local journals, but Government had not dared to indict them, but had pounced upon his client. He was sure the jury would establish their privileges by acquitting the defendant.

The defence.

The Chief Justice's summing up.

Chief Justice Hulme addressing the jury said, first, that they must consider if the article was libellous, and was calculated to bring Sir John Bowring's conduct into contempt, and reflected on

* See this son mentioned, *antè* Chap. XIII. § I., p. 322.

† See *antè* Chap. XVIII., p. 427.

his private as well as his public character; and secondly, if the defendant was the author. If they were satisfied of this, they would find the defendant guilty; if, on the other hand, they believed the publication of the article not calculated to injure Sir John Bowring's character, or bring him into disrepute, they would return a verdict of not guilty.

The verdict.

The jury then retired, and returned in fifteen minutes with a verdict of *Guilty, unanimously.* The defendant was then called up for judgment.

The Chief Justice, in a feeling address, said he feared the defendant's pen had been emboldened by the reluctance of the Government to prosecute such scurrilous and defamatory articles as sometimes emanated from the press in the Colony, and further, that defendant's pen had been emboldened by the very lenient sentence passed in a recent case before the Court—a simple fine, which was raised by subscription, thus setting the law at defiance.* He had a painful duty to perform, but he should not shrink from it; he was determined to vindicate the law, and put a stop to the unmeasured abuse of public individuals. He therefore felt compelled to sentence the defendant to imprisonment for the period of six calendar months, and further that he do pay a fine of one hundred pounds to the Queen, and be further imprisoned till such fine be paid.

The defendant sentenced to imprisonment and fine.

Mr. Murrow in the debtors' prison.

The law having now vindicated Sir John Bowring's character, it was felt he would not insist on the sentence passed upon the defendant being fully carried out. Mr. Murrow was accordingly placed in the debtors' side of the prison and allowed every comfort. Sir John Bowring had therefore shown that he bore no unworthy animus against a person who deserved and had no right to expect mercy at his hands, although Mr. Murrow, it was known, was afflicted with what was called locally "Bowring-phobia"—"We *hate* Sir John Bowring," as he had said in a late article, had ever been the burden of his song, but on the other hand it must be admitted that Sir John Bowring's administration of the affairs of the Colony had been a shame, if not a disgrace, to the British name. His ignorance of ruling, as events recorded herein so far and that as regards the administration of justice alone, had made his government one tissue of folly from beginning to end, which must have made him by this time the laughing-stock of all.

Afflicted with 'Bowring-phobia.'

Sir John Bowring's shameful administration.

Mr. Murrow conducts his paper in prison.

His attacks against Sir John

After his incarceration Mr. Murrow continued to conduct his paper, writing his editorial effusions within the prison walls, and needless to say that his scurrilousness and attacks against Sir John Bowring continued unabated. A perusal of the local

* See the case against Mr. Tarrant for libelling Dr. Bridges, *antè* Chap. XIX., p. 141.

Ch. XX § II. papers on the subject of these attacks affords at this date considerable amusement.

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Bowring continue unabated.

*The Illustrated London News* of the 3rd July, 1858, in its leading article, contained some pertinent remarks relative to Mr. Murrow's case and the weakness shown by Sir John Bowring and his immediate advisers in dealing with the prisoner, as follows :—

*The Illustrated London News* upon the case and the weakness of Sir John Bowring.

"From China we have nothing of interest, except that a Mr. Murrow, of Hongkong, has 'got' six months' imprisonment for libelling Sir John Bowring. The Judge referred to the fact that in a recent case in which a fine had been inflicted it had been paid by public subscription,* and expressed his determination to vindicate the law. Without reference to this particular case, there is much sense in this mode of treatment. There is, though it falls rather hard occasionally, and in this instance the offender had to suffer both for his own sins and for those of others. We expressed a hope that Sir John Bowring would remit the sentence of imprisonment, instead of which he appears to have fallen into the error of attempting to treat Mr. Murrow like a child, by keeping him shut up in a closet but allowing him his playthings. Naturally enough the soul of Murrow revolts at this treatment. Had he been imprisoned among the convicts he might have enjoyed the profitable society of Eli Boggs† and Ma Chow Wong,‡ considered himself a martyr to the cause of free discussion, but free confinement in a debtor's jail could hardly be borne, even though (as he himself assured the public) he was deeply sympathized with in his sufferings by all his lady friends. The mistake fallen into by His Excellency is made apparent by some recent events, of which the strictly correct account is as follows, and has been gathered from a variety of sources : Sir John Bowring instructed the Governor of the Gaol to treat Mr. Murrow with every indulgence, and to give him every facility for carrying on his paper. Owing to certain libels which appeared in that paper, General Straubenzee demanded the suppression of it ; and instead of acceding to this, Sir John directed Mr. Inglis to bring the matter before Mr. Murrow, and to enforce the ordinary Gaol-rules in regard to written documents. When doing so Mr. Inglis reminded his prisoner that it was extremely difficult to enforce the Gaol rules as to written documents on persons confined in the Debtors' Prison, and that, unless he behaved more discreetly, it might be found necessary to remove him to a neighbouring building. On this natural and humane remark, Mr. Murrow has raised up his cock and bull story of His Excellency having ordered him to be imprisoned among the convicts, and of Mr. Inglis having interfered and become responsible censor ; and, what is especially worthy of notice, whenever he was left bound only by a promise to the late *(sic)* acting Colonial Secretary, he came out with this story, in order (for we can see no other reason) to annoy the two men who have been most considerate towards him.

As to the course pursued by His Excellency, we have no further good word to say. He virtually made himself responsible for Mr. Murrow's paper keeping within the bounds of moderation, and he has failed so to keep it ; he has excited no gratitude in Mr. Murrow, and has got no satisfaction out of him. Such are the results of pursuing a middle course : crush a snake or leave it alone."

On his release Mr. Murrow claims $5,000 damages

And that is exactly what took place. Mr. Murrow's treatment in Gaol excited no gratitude at his hands, and after 'serving his time,' on his release from confinement he in-

* The Crown against Tarrant, *antè* Chap. XIX., p. 444.
† *Antè* Chap. XVIII., p. 436.
‡ *Antè* Chap. XIX., p. 444.

stituted an action for assault and false imprisonment against Sir John Bowring, claiming $5,000 damages, which came on for hearing on the 30th December this year, as hereinafter referred to.*

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against Sir John Bowring.

Attempts at incendiarism had become frequent recently, and undoubtedly they were to be traced to outside influence. The authorities, baffled in their endeavours to arrest the culprits, notified on the 17th May that "a reward of $100 would be given to any person causing the apprehension and conviction of an incendiary, and as it had also come to the knowledge of His Excellency that the notorious pirate Chu Aqui was at the head of these incendiaries, a reward of $500 would be given for his apprehension."

Frequent attempts at incendiarism.

Chu Aqui, a notorious pirate, at the head of incendiaries.

At a meeting of the Executive Council held on the 19th May, Mr. Kingsmill was sworn in as a Justice of the Peace and as Assistant Police Magistrate during the temporary absence on sick leave of Mr. W. H. Mitchell.

Mr. Kingsmill, J.P., and Assistant Magistrate, *vice* Mr. Mitchell on leave.

Lady Bowring, who had never fully recovered from the effects of the poisoning, by the 'Esing' bakery in January last year, and whose case at the time was considered one of the worst,† left for England on the 23rd May, and died on the 27th September at Taunton, Somersetshire, at the age of sixty-four.

Departure of Lady Bowring.

Her death.

The sections of the Act of Parliament 20 and 21 Vict. c. 85, relating to Divorce and Matrimonial Causes, extended to the Colony by Ordinance No. 5 of 1858, were published in the *Gazette* on the 26th May.

Divorce and Matrimonial Causes Act, 20 and 21 Vict. c. 85.

Ordinance No. 5 of 1858.

* Chap. XXV., *infrà*.

† See *antè* Chap. XVII. § II., pp. 415, 423, 424.

# CHAPTER XXI.

## 1858.

Suspicious conduct of Dr. Bridges in relation to the opium monopolist.—Dr. Bridges compelled to ask for an inquiry.—Disclosures made in the Police Court.—Dr. Bridges in the Legislative Council.—A Committee appointed.—Dr. Bridges' attack upon Mr. Anstey. Accuses him of being the real accuser.—The report of the Committee.—Discredit to the Government of the Colony.—Mischief attributable to incongruous position of acting Colonial Secretary, with private practice as a barrister.—Astonishment at Dr. Bridges not resigning.—Sir John Bowring attempts to clear Dr. Bridges of all imputations of *mala fides*.—Mr. Anstey as an alleged instigator of the charges.—Sir John Bowring on private practice.—His despatch to the Secretary of State.—Sir John Bowring forwards evidence taken at the opium inquiry.—Attacks Mr. Anstey.—Daring robbery with violence upon Messrs. Hazeland and Stace.—The ruffians never brought to justice.—Paper by Mr. Anstey on slavery and the Dred Scott decision.—Ordinance No. 10 of 1858.

Chap. XXI.

Suspicious conduct of Dr. Bridges in relation to the opium monopolist.

SERIOUS complaints began to be ventilated at this period in regard to the conduct of Dr. Bridges, in connexion with the opium monopolist. His double position of acting Colonial Secretary and standing counsel to the monopolist gave rise to grave suspicions as to the means by which the tenders for the opium farm had been accepted and dealt with. In consequence of the strong remarks as to the dual position held by him, and the comments passed by the local press upon the subject, Dr. Bridges, to clear his character, found himself compelled to call for an inquiry into the whole matter of the monopoly, but not until certain disclosures had been made in a case heard in the Police Court on the 15th April, 1858, wherein Chun Tai Kwong, the monopolist, had prosecuted a Mr. Hoey for boiling, etc., opium without a licence.

Dr. Bridges compelled to ask for an inquiry.

Disclosures made in the Police Court.

Dr. Bridges in the Legislative Council.

At a meeting of the Legislative Council held on the 7th May, Dr. Bridges, with the Governor's permission, called the attention of the Council to certain statements in regard to the disclosures mentioned above which had appeared in *The Hongkong Register* of Tuesday, the 4th May, which he said affected his character as an officer of the Government. He expressed his wish that the Council should, in some manner, afford him an opportunity of proving "the utter groundlessness of the insinuations contained in the above newspaper."

A Committee appointed.

Accordingly a Committee consisting of Colonel Caine, the Lieutenant-Governor; Mr. Davies, the Chief Magistrate; and Mr. Dent,* was appointed to inquire into the statements. Subsequently, at a meeting on the 10th May, upon Colonel Caine

* *Antè* Chap. XIX., p. 449.

stating his unwillingness to form part of the Committee, it was moved by the Attorney-General, seconded by Colonel Caine, that such Committee consist of the Chief Magistrate and Mr. Dent only, and agreed to, and also that the inquiry be held with open doors.

The Committee, after holding several meetings, closed its sittings on Friday, the 28th May, at noon, the last witness examined being Dr. Bridges himself. Mr. Anstey's concluding evidence at the previous sitting was given in reply to a question on the subject of Dr. Bridges' infringement of professional etiquette. The reply set forth at length the Attorney-General's opinion of Dr. Bridges' conduct in the affair, and the opinion he expressed was very much adverse to the acting Colonial Secretary. Dr. Bridges stated that from the course which the investigation had taken "there was no doubt left in his mind that the Attorney-General was his real accuser in the matter, using the columns of *The Hongkong Register* as the means of his anonymous attacks." It is hardly necessary to say that this was stoutly denied by the paper in question.

Dr. Bridges' attack upon Mr. Anstey.

Accuses him of being the real accuser.

The following was the report of the Committee dated the 31st May, 1858 :—

The report of the Committee.

Your Committee, considering that the words of the order of reference should be taken in their widest sense, and that the integrity of the acting Colonial Secretary implies not merely ordinary honesty, but the wholeness and singleness of his character as Colonial Secretary, have inquired into his entire conduct in reference to all matters connected with the grant of the opium monopoly. Your Committee have also allowed themselves as wide a range as possible in their method of inquiry. They advertized in the local papers the publicity of their proceedings, and invited and made use of suggestions from all sources as to the witnesses to be examined and the questions to be put to them. They permitted themselves great latitude in the kind of evidence which they admitted, and only struck out as inadmissible one question and its answer, and part of the answer to another question. They omitted to call only one witness suggested to them, as his evidence would not have referred to the matter under inquiry ; and every person invited to give their information did so, with the exception of Mr. Hoey. His evidence would have been important, but he refused to attend, whence they conclude that he dared not deny before them having made these defamatory statements (though he has elsewhere denied having made them) which gave rise to the present inquiry.

Your Committee have now to report, as the result of their proceedings, as follows :—

1*st*. It appears that the tender of the present monopolist (Chun Tai Kwong), and those of two other persons, were not received by the acting Colonial Secretary until the 14th March, the day after the last day for tendering ; that Chun Tai Kwong's tender was the highest, and the reason given for the lateness of his tender being satisfactory to His Excellency, that it was accepted by him, with a full knowledge of the facts, on the 15th March ; that two days after this, on the 17th March, the Opium Monopoly Ordinance passed the Legislative Council, which had not previously sat.

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Colonial Secretary, were introduced into the Ordinance on the acting Colonial Secretary's motion, but that this was done with the most perfect openness, the Members of the Legislative Council being fully informed by Dr. Bridges of his reasons for proposing the alterations. It does not appear that any undue influence was used in obtaining the grant for the present monopolist; or that any corrupt motive existed for making these changes in the Ordinance; and there is not the slightest ground for believing that anything in the nature of a douceur was offered to, demanded by, or accepted by, Dr. Bridges.

*2d.* The above matters being the only ones connected with the grant of the opium monopoly, in which it has been suggested that the honesty or honour of the acting Colonial Secretary could be involved, your Committee are clearly of opinion that the honesty and honour of Dr. Bridges, in reference to all proceedings connected with the grant of the opium monopoly, remain wholly unimpeached.

*3d.* It further appears that, early on the morning of the 17th March—the day when the Ordinance passed, and when the alterations referred to were made in it—or of some subsequent day, the monopolist retained Dr. Bridges as his counsel; that on the 25th March, immediately after the monopolist had executed a bond to Government connected with the monopoly at the Government Offices, Dr. Bridges called the Clerk of the Councils into the Colonial Secretary's room, that he might hear Dr. Bridges tell the monopolist that, though he was his counsel, he could not act for him against the Government; that the fee on the retainer was paid in the evening of the same day to Dr. Bridges at his house, and that the monopolist had ascertained some days previously from Dr. Bridges's comprador what the amount of the fee should be, but without the knowledge or sanction of Dr. Bridges; that when Dr. Bridges accepted the office of acting Colonial Secretary in February, 1857, it was on an express understanding with the Governor that he should be allowed to practise as a barrister, and that his time should be his own;* and that it did not occur to Dr. Bridges at the time he accepted the retainer from the monopolist, that there might on future and various occasions be questions connected with the opium monopoly, in which his duty to the Government as a Member of the Executive Council would seriously clash with his duty as counsel to the monopolist. It further appeared to your Committee—though the monopolist now denies it, and the evidence is conflicting—that the monopolist did say to Mr. Hoey, "*Dr. Bridges is a very clever man; he can do what he likes with the Governor, and can make a law and tear it to pieces again the next day.*"†

*4th.* These proceedings in the opinion of your Committee show the want of a due appreciation by Dr. Bridges of the demands of his high and important offices as Acting Colonial Secretary, Member of the Legislative Council, and Member of the Executive Council; and denote an absence of that proper sensitiveness which should have made him, above all other persons, foresee and avoid all positions of possible conflict between his public and private duties, which, in the case of the opium monopoly, were sufficiently obvious.

That Dr. Bridges should hold the offices mentioned, and at the same time retain the privilege of practising as a barrister, however undesirable a state of things, is one for which he cannot be blamed; but the limits within which he would avail himself of this privilege were under his own control. He fixed the limit that he would not act against the Government, and the place in which he informed his client of this fact was most unhappily chosen. Further, he should have seen that any one, more particularly a Chinaman, must think that he would greatly gain by employing as his counsel a high

* See *antè* Chap. XVIII., p. 426.

† It may here be mentioned that the monopolist Chun Tai Kwong was an English

officer of Government, through whose means changes so beneficial to himself had been made at the last moment in a public Ordinance, and that the monopolist and the Chinese community generally would conclude, however erroneously, that the official so retained, and the Government of which he was a Member, were open to private influence. That such must be the effect of Dr. Bridges's conduct on the minds of the Chinese, there cannot be any doubt. Viewed in this light therefore, your Committee regret to say that they consider Dr. Bridges's conduct in reference to the opium grant blameable, though, as they have before stated, they consider his honesty and honour quite unimpeached.

H. Tudor Davies, *Chairman.*
John Dent.

Council Chamber, 31st May, 1858.

Discredit to the Government of the Colony.

Mischief attributable to incongruous position of acting Colonial Secretary, with private practice as a barrister.

This report could not be taken in any other light than that of a severe and pointed rebuke. At all events it disclosed a state of affairs reflecting discredit on the Government of the Colony, and the mischief was to be attributed to the Government alone for allowing Dr. Bridges to take the office of acting Colonial Secretary and holding it in conjunction with the incongruous office of a private practising barrister.

Astonishment at Dr. Bridges not resigning.

Astonishment was expressed at Dr. Bridges not resigning his appointment at once, though he endeavoured to do so in July following, ostensibly because Mr. Mercer had obtained an extension of three months' leave, and also because he was anxious "to resume the exercise of his profession,"* but in reality because he was aware of the turn that affairs had taken in connexion with Mr. Anstey's charges against Mr. Caldwell and which would have enabled him, as he himself admitted in Council on the 7th August, to again hold the office of Attorney-General if offered to him.* He had asked for the Committee and the Committee had not quite cleared him of the charges.

Sir John Bowring attempts to clear Dr. Bridges of all imputations of *mala fides.*

Mr. Anstey as an alleged instigator of the charges.

Naturally, having appointed Dr. Bridges to the office of Colonial Secretary with private practice, Sir John Bowring had to clear him of all imputations of *mala fides*, and this he did, as the following despatch to the Secretary of State shows, in a very mild manner. Mr. Anstey, of course, comes in as an instigator of the charges laid at Dr. Bridges' door and for a share of the blame imputed to the latter. What Sir John Bowring said as to private practice in Hongkong in those days is, in a community such as Hongkong, (as is, moreover, pointed out by the Committee in the foregoing report in reference to the Chinaman) as applicable to-day, as when Sir John Bowring wrote :—

Sir John Bowring on private practice.

His despatch to the Secretary of State.

Government Office, Victoria,
Hongkong, 4th June, 1858.

My Lord,

I am sorry to be compelled to trouble Your Lordship on a subject which has caused much discussion and no small amount of scandal in this Colony.

* See Chap. XXIII., *ubi supra.*

Chap. XXI. — 1858.

An article appeared in one of the local newspapers, which I herewith enclose, imputations on the acting Colonial Secretary, felt by him to be so injurious to his reputation that he brought the subject before the Legislative Council, who appointed a Committee to inquire and report. Their report, with the accompanying evidence, I have the honour to enclose.

Whoever was the author or the adviser of the article complained of, there can be no doubt that the Attorney-General, Mr. Chisholm Anstey, has been most actively engaged in the present attempt to discredit and condemn Dr. Bridges.

It would be impertinent for me to anticipate Your Lordship's judgment in a matter so especially referred to the Supreme Authority. Great inconvenience would have resulted to the public interests had Dr. Bridges thrown up his office; and I am glad he has reconsidered his intention, especially as the leave of absence granted to Mr. Mercer, the Colonial Secretary, is near its expiration, and he may be expected here in the course of the coming month.

I venture, however, to make a few observations on the general subject.

I have long come to the conclusion that the permission, in a Colony like this, granted to any public functionary to be engaged in, and to derive pecuniary benefit from, private professional practice, is necessarily compromising and disparaging to himself, and injurious to Her Majesty's service.* *

The Attorney-General, the Surveyor-General, and the Colonial Surgeon have been allowed this privilege (though in the case of the two last-named functionaries the privilege has been lately withdrawn), and in the embarrassing position in which I was placed by Mr. Mercer's departure, I had to consider whether the fact of Dr. Bridges being a practising barrister (in some respects an advantage to the Governor) was sufficient to counterbalance his many claims to my confidence; these claims earnestly advocated by Mr. Mercer, who was on terms of great intimacy with Dr. Bridges,† and who thought it most advisable that Dr. Bridges' services should be secured to the Colony, with which he had been long officially connected, and of whose affairs he had intimate knowledge and considerable experience. I concluded that, on the whole, Dr. Bridges was the best appointment I could make, and the appointment was confirmed by Mr. Secretary Labouchere.

In reviewing Dr. Bridges' career as acting Colonial Secretary, I am not unaware of his defects, attributable, no doubt, to his inexperience of his novel position. He has not always consulted the Governor in cases where official authority has been exercised. It is difficult sometimes to draw the line between those details where the action of the Colonial Secretary is becoming, and those graver matters which should be referred to his chief. But looking at Dr. Bridges' connexion with the Colonial Secretary's Department, he has on the whole, in my judgment, rendered active and valuable services, especially in the improvement of our finances, and the reform of our Police, and the general good government of the Colony. And I am compelled to add, that far from having received appropriate and friendly aid from the Attorney-General, whether from professional rivalry, or from an uncontrollable, restless, and turbulent temper, or from both united, Mr. Anstey has greatly augmented the difficulties of Dr. Bridges' position, whether by publicly depreciating his

* In a later despatch to Sir Edward Lytton, dated the 16th October, Sir John Bowring again alluded to the inadvisability of allowing private practice to the Attorney-General as follows: "All these discussions will, I hope, prove to Her Majesty's Government the desirableness of disallowing private professional practice to the Attorney-General... the jealousies and bickerings created by the existing state of things are prejudicial to the Queen's service, and I fear are an inevitable consequence of the clashings of public interests and private emoluments." See Chap. XXIV., *infrà*, and on the subject of private practice, see also Vol. II., Chap. LXXXIII.

† See *antè* Chap. XVIII., p. 425.

merits as a lawyer, or by failing in bearing towards one holding a superior rank, which is essential to the preservation of order harmony. Chap. XXI. 1858.

I have, etc.,

(Signed) JOHN BOWRING.

*P.S.*—The evidence not having yet been received from the printer will be sent with the next despatches and the duplicate of the present.

(Signed) J. B.

7th June.

Sir John Bowring forwards evidence taken at the opium inquiry. Attacks Mr. Anstey.

By the mail of the 21st June, the Governor forwarded to Lord Stanley, the Secretary of State, the evidence taken at the inquiry connected with the grant of the opium monopoly, and with it a report which, while saying but little or nothing in favour of Dr. Bridges was nothing but an attack upon Mr. Anstey. The following was the report in question:—

Government Office, Victoria,
Hongkong, 21st June, 1858.

My Lord,

I now send to Your Lordship the evidence which had not been returned from the printer when I forwarded despatch No. 73 of the 4th instant, on the subject of Dr. Bridges' connexion with the grant of the opium monopoly. I find it is stated in this evidence that the opium monopolist is in great favour with "his patron," the Governor, who often received him on deputations; and the personal influence of the said monopolist with the Governor is represented to have kept one of the witnesses in dread.

Though the Attorney-General avoids making himself responsible for these inventions (for such they are), he gives them as far as he can the sanction and support of his authority.

I beg to assure Your Lordship that, at the time of granting the monopoly, I did not recollect ever having heard the monopolist's name (Chun Tai Kwong); that his person is even now unknown to me; that I have no remembrance of ever being in his presence until one day going into the Colonial Secretary's Office, Dr. Bridges, pointing out a group of Chinamen, said, "These are the Chinamen who have had the opium grant." I did not remain in the room a minute. Long after the monopoly was granted, I was informed that Chun was a Christian Protestant convert (whose wife was living at St. Paul's College), of whom I had heard from the Bishop and others, but his identity with the opium monopolist was to me, a discovery.*

I can scarcely pass over in absolute silence the liberties taken by the Attorney-General with the character and the conduct of the Governor and the Government, which would indeed deserve little credit if either Governor or Government were blown about by the shifting though boisterous gusts of Mr. Anstey's violence. Though Dr. Bridges is, by the report of the Committee, perfectly cleared from the charge of corruption, and no stigma is left upon his honesty and honour, I should have been much better satisfied if, in his peculiar position, he had not undertaken to be Chun Tai Kwong's adviser; and it would have been well if Mr. Anstey had learned a little more about the character of his client, Mr. Hoey, who has managed to pocket ten thousand dollars for his share in the monopoly, before forwarding his letter of the 24th April, to the Government, and, to a certain extent, identifying himself with statements of a very questionable character. If I were to listen to and investigate all the tittle-tattle of the Colony, and mix myself up with the

* In reference to Chun Tai Kwong, see also *antè* p. 474, *note*.

Chap. XXI. 1858. libels and lies which the tropics appear, with other noxious things, to generate, I must lay aside all the graver duties of my office to fan noisome fires, which, left alone, are speedily extinguished in their own foul smoke.

I have, etc.,

(Signed) JOHN BOWRING.

**Daring robbery with violence upon Messrs. Hazeland and Stace.**

A daring highway robbery with violence was perpetrated on the morning of Wednesday, the 2nd June, upon Mr. Hazeland, the solicitor. That gentleman and Mr. Stace were returning from Stanley by the military road, early in the morning, when the former pushed on before his companion who waited on the road for their horses, which were being brought up by attendants. When Mr. Hazeland was some distance in front, he met three or four Chinamen, one of whom accosted him in English. When turning round to acknowledge the salutation, another Chinaman,—who with the others had jumped from behind a tree when Mr. Hazeland was coming along—made a blow at his head with a sword, and, in attempting to ward off this, Mr. Hazeland's thumb was nearly severed from his hand. Another stroke caused a tremendous gash on the back of his head and stretched him senseless on the ground. Other wounds were inflicted and his gold watch and chain, hat, and other things were taken away. Mr. Stace came up before the villains had retired any distance, but unfortunately he had only three shots in his revolver, and as the men waved their swords and appeared ready to fight, he judged it best to act only on the defensive, and allowed them to retire. With great difficulty Mr. Hazeland was supported on horseback down to town and taken to the Seamen's Hospital, where he lay for several weeks in a precarious condition. On the 4th June Government offered a reward of $100 for the apprehension and conviction of the robbers, and a free pardon to any one engaged in the commission of the robbery, other than the person or persons who inflicted the violence. The ruffians, however, were never brought to justice.

**The ruffians never brought to justice.**

On the 25th June, a Chinaman was arrested on suspicion and charged with the murderous assault, but there being no evidence against him, Mr. Hazeland, moreover, being short-sighted and not having recognized him, he was brought before the Magistrate and discharged. Another Chinaman named Ashing, against whom a charge of conspiracy regarding the assault had also been entered, after being remanded several times, was also discharged on the 8th July, for want of evidence.

**Paper by Mr. Anstey on slavery and the Dred Scott decision.**

A very interesting paper on slavery, being a critical review of the speech of Senator Benjamin upon the Dred Scott decision, was, on the 13th June, written by Mr. Anstey. This paper

though not meant for publication, many years after found its way into the press.* Chap. XXII. 1858.

The Legislature, on the 15th June, passed Ordinance No. 10 of 1858, making it lawful for the Governor to substitute penal servitude for transportation until suitable places to which offenders could be transported should be appointed. Ordinance No. 10 of 1858.

* See *Hongkong Daily Press*, 26th September, 1873.

# CHAPTER XXII.

## 1858.

Vigorous movement for the amalgamation of the two branches of the legal profession.—The merchants and bankers memorialize the Attorney-General.—The origin of the memorial for amalgamation.—Motion of the Attorney-General in the Legislative Council.—Memorial read and ordered to be printed.—The Hongkong Law Society memorialize the Chief Justice and the Governor-in-Council against amalgamation.—The memorial to the Chief Justice.—The memorial to the Governor-in-Council. The Chief Justice presents the memorial of the Hongkong Law Society to the Council.—The Governor lays on the table the draft of 'An Ordinance for Practitioners in Law'.—Discussion upon the memorial and as to Mr. Parsons having been deputed by the Hongkong Law Society to represent them. Exorbitant charges of the lawyers discussed.—The Governor and Mr. Anstey upon the Chinese.—The Ordinance for practitioners in Law.—The Hongkong Law Society heard in Council.—First occasion on which press reporters attend the Legislative Council.—The whole Colony calls for amalgamation.—The local press upon the subject.—Meeting of the Legislative Council upon the amalgamation question.—Mr. Parsons disowned by the Hongkong Law Society, and ordered to withdraw from the Council.—Denial of certain attorneys as to Mr. Parsons representing them.—The Council declare the petition a fraud upon its privileges.—Correspondence relative to Mr. Parsons' conduct and the alleged petition from the Law Society and his having been deputed to represent it.—The Governor's remarks upon the enormous charges imposed upon the Chinese.—Resolution on motion of Chief Justice that Chinese be notified in *Government Gazette* that bills of costs are taxable.—Mr. Anstey and Ordinance No. 13 of 1856.—Ordinance No. 12 of 1858 'for Practitioners in Law' passed. The outcome.—Mr. Anstey renews his application for Police protection.—The Governor's reply.—Mr. Anstey addresses the Secretary of State and alludes to the constables allowed to Mr. Caldwell.—Rules and orders of the Legislative Council of 6th April, 1843, re-published.—Rules and orders of 7th March, 1858, rescinded.—Mr. Anstey states in the Legislative Council that the Registrar-General's office is a sinecure.—Pawnbrokers attempt a demonstration, considering their licences exorbitant.—Police warning as to increased watchfulness by residents necessary.—Caution as to walking or residing far away from town. Night passes. Hours reduced.—Condition of affairs in Hongkong consequent upon relations with China.—Hostile action of the Chinese and others. Artisans leave the island.—Stoppage of supplies of provisions. Food at famine prices.—Police inefficiency. The residents memorialize the Governor and ask for prompt remedy.—*The Straits Guardian* on the condition of the Police Force.—The memorial of the community.—The reply of the Governor as to measures taken for the protection of the Colony.—Proclamation announcing Treaty of Peace between England and China and requiring obedience to law and good behaviour on the part of the Chinese inhabitants.

Chap. XXII.

Vigorous movement for the amalgamation of the two branches of the legal profession.

The merchants and bankers memorialize the Attorney-General.

A VIGOROUS movement, more important than that recorded in January last,* again set in at this period for the amalgamation of the two branches of the legal profession. The Hongkong merchants and bankers in a body decided upon memorializing the Attorney-General upon the subject, not aware, however, at the time, that they had a precedent in the Charter of the Straits Settlements' Court of Judicature, which recognized only one class of practitioners. On the 10th May a petition signed by the most influential residents was accordingly forwarded to Mr. Anstey, of which the following is a copy:—

Victoria, Hongkong, 10th May, 1858.

Honourable T. CHISHOLM ANSTEY, Esq.,
*Attorney-General, etc., etc., etc.*

Sir,—We, the undersigned, do ourselves the honour of addressing you, the law officer of the Crown, for the purpose of drawing your attention to the

distinction (unnecessary as it appears to us) existing between barristers and solicitors in this Colony. Whatever may be the custom at Home in this respect, we think that a great benefit would result to us and our fellow-citizens, were an amalgamation effected between the two branches of the legal profession here, and should you feel disposed to concur in our views, we trust that you will take such steps as may seem to you best adapted to carry out our wishes.

We do not desire this change on account of the expenses attending legal proceedings, as we know they must necessarily be high in this place; but we can see no sufficient reason why we should be compelled to employ two advisers when it would be much more convenient for us to confide the whole of the law matters to one. The conviction has long been gaining on us that, in a young and small community like ours, there should be but one class of practitioners, and that unrestricted competition between all the properly admitted members of the Supreme Court would be a great improvement on the existing state of things.

We have the honour to be,
Sir,
Your most obedient servants,

Dent & Co.
Lyall, Still & Co.
Birley & Co.
Turner & Co.
*For* Mercantile Bank—
John Costerton, *Manager.*
Siemssen & Co.
Blenkin, Rawson & Co.
Maxn. Fischer, *Supt., P. & O. S. N. Co.*
John Burd & Co.
*p. pro* Phillips, Moore & Co.,
P. Cohen.
Neave, Murray & Co.
Lindsay & Co.
Wm. Pustau & Co.
P. & D. N. Camajee & Co.
Eduljee Framjee, Sons & Co.
Augustine Heard & Co.
Fletcher & Co.
De Silver & Co.
Samuel Woodruff.
Thomas Hunt & Co.
Gilman & Co.
R. McGregor & Co.
A. Shortrede & Co.
D. Lapraik.
Edwards & Balley.
P. Campbell,
*Manager, Oriental Bank Corporation.*

Gibb, Livingston & Co.
D. N. Mody & Co.
[A signature in *Parsee.*]
Dhurumsey Poonjabhoy.
[A signature in *Parsee.*]
Cassumbhoy Nathabhoy & Co.
Cowasjee Pallanjee & Co.
Hormusjee & Rustomjee.
Aderjee Sapoorjee.
C. S. Lungrana & Co.
R. Ruttunjee & Co.
David Sassoon, Sons & Co.
Judah & Co.
B. C. Bhabha.
Lane, Crawford & Co.
*p. pro* Bowra & Co.,
W. Harding.
Smith & Brimelow.
F. Woods.
*For* Commercial Bank of India—
Henry Rutter, *Agent.*
G. Duddell.
G. Harper & Co.
MacEwen & Co.
Russell & Co.
W. H. Wardley & Co.
Vaucher Frères.

As to the origin of this petition or the manner in which, it is alleged, it was got up, the records hereafter will show.*

The origin of the memorial for amalgamation.

At a meeting of the Legislative Council held on the 25th

Motion of the Attorney-

Chap. XXII. 1858.

May, the Attorney-General brought up and read the following motion in connexion with the foregoing prayer:—

General in the Legislative Council.

"The Attorney-General,—To present a memorial addressed by fifty-one mercantile and trading firms of Hongkong to himself, as the Law Officer of Her Majesty, on the distinction existing between the two branches of the legal profession here, and recommending an amalgamation between them; to call attention to the same, and to move that it be printed for general information."

Memorial read and ordered to be printed.

On the question being put and passed, the memorial was read and ordered to be printed. Mr. Lyall stated that he would, before the next meeting, send to the Clerk of Councils a notice of motion for submission to the Council, on the subject matter of the memorial. In the meantime, considering their interests at stake, certain attorneys of the place without having, however, the full sanction of the whole of their body as constituted by the Hongkong Law Society, through the Secretary of the Society, presented memorials both to the Chief Justice and to the Governor-in-Council against the proposed amalgamation, considering it unfair and prejudicial to themselves.

The Hongkong Law Society memorialize the Chief Justice and the Governor-in-Council against amalgamation.

The memorial to the Chief Justice.

The following was the memorial presented to the Chief Justice on the 5th June:—

*To the* Honourable JOHN WALTER HULME, Esq.,
*Chief Justice of the Colony of Hongkong.*

THE HUMBLE MEMORIAL OF THE HONGKONG LAW SOCIETY.

We, your memorialists, look to Your Lordship, as the common head of both branches of the legal profession, to protect us against an insidious attempt, now being made, to deprive us of our just rights and privileges, under the specious pretext of the amalgamation of the two branches, thereby pretending to give to us equal advantages and position with the barristers.

None in this Colony knows so well as Your Lordship the reasons for the division of the profession into barristers and attorneys, and the advantage gained to the community thereby, and that the assistance which the Court expects, and so often receives, from the learning and research of an intelligent bar, and which could not be expected from the legal education of an attorney, is not lightly to be disregarded.

Your Lordship, in the discussion of points of law before you, would hardly lose sight of the fact, that an attorney was addressing you in one case, and a barrister in another, and however desirous you might be to give a fair and equal attention to the arguments of each, it would be more than could be expected of humanity that you should pay equal regard to them.

We conceive that an amalgamation would be very prejudicial and unfair to us, and of no advantage to the community, who, not regarding expense, may have all they can desire under the present system.

We beg leave to hand to Your Lordship, for presentation to the Legislative

and we humbly request Your Lordship to give such effect to the prayer thereof in the Legislative Council, as Your Lordship may deem just and equitable. —We have the honour to be, Your Lordship's obedient servants, Chap. XXII. — 1858.

THE HONGKONG LAW SOCIETY,
By their Secretary,
EDWARD K. STACE.

5th June, 1858.

The memorial to the Governor and the Legislative Council was of a different nature altogether. It sounded more like an alarm than anything else, and in their attempt to upset the movement the attorneys outstepped the bounds of truthfulness. They asserted that the heads of the mercantile and other firms who signed the memorial for amalgamation had done so in ignorance of the subject and principally because two members of the Legislative Council had signed it first;—*that no complaint had been made against the attorneys' branch of the profession*,—which in itself was a gross perversion of facts, as this memorial had been got up principally owing to complaints against the lower branch of the profession;*—also that the memorial originated in a hostile spirit with a view to benefit the members of the bar. The memorialists further denied the competency of the Colonial Government to effect the change asked for, and ended by asking for a Committee of Inquiry. The memorial to the Governor-in-Council.

The following was the petition, said to have been drawn up by Mr. Parsons, the leading spirit in the matter:—

To His Excellency Sir JOHN BOWRING,
*Governor of Hongkong, and its Dependencies, etc., etc., etc., in Legislative Council.*

THE HUMBLE PETITION OF THE HONGKONG LAW SOCIETY

*Sheweth*,—

That in *The Government Gazette*, of the twenty-ninth of May, one thousand eight hundred and fifty-eight, a memorial was published, purporting to have been signed by fifty-one mercantile and trading firms of Hongkong, addressed to the Attorney-General, in which an opinion was expressed that the distinction between barristers and solicitors in this Colony was unnecessary, and that great benefit would result to the memorialists, and their fellow-citizens, were an amalgamation to be effected between the two branches of the legal profession here. And further stating, that they did not desire the change on account of the expenses attending legal proceedings, as they knew they must be necessarily high in this place, but that they could see no sufficient reason why they should be compelled to employ two advisers, when it would be much more convenient for them to confine the whole of their law matters to one, and that the conviction had been long gaining on them, that in a young and small community like ours, there should be but one class of practitioners, and that unrestricted competition between all the properly-admitted members of the Supreme Court, would be a great improvement on the existing state of things.

Chap. XXII. — 1858.

That no reasons are given in the memorial, except the convenience of confiding law matters to one adviser, and the inability of the memorialists to perceive any sufficient reason for a state of things which has existed in England at least ever since the time of King Henry the Third, and has been found convenient and beneficial wherever the British laws prevail, and under which the memorialists, if they do not regard the expense, as they assert, can have all the convenience which they desire.

That your petitioners are at a loss to understand the conviction of the memorialists, that in a young and small community there should be but one class of practitioners, when it is borne in mind that in such a young and small community there has been introduced, under the auspices of the present Attorney-General, and there is now in full operation, all the technical, artificial, and complicated machinery of the law as existing at Home, with the addition of the numerous local laws which the position of this Colony has rendered necessary.

That the memorialists appear to have overlooked the fact, that in England there is not only the distinction of barrister and attorney and solicitor, but that the subdivision between barrister and barrister in different branches of the law is as distinct as between barrister and attorney. There are the Common Law barrister, the Equity Draughtsman, the Conveyancing Counsel, the Bankruptcy and Insolvency and Criminal Law Counsel, and the Advocate of the Admiralty Court, and again there are special pleaders and conveyancers, who, not being counsel, relieve them of some of their most difficulty duties.

That the attornies, solicitors, and proctors are the *general* practitioners, who are not expected to possess profound knowledge of any particular branch of law, but to have a *general* knowledge of all, and to be expert in collecting and arranging facts with a view to the application of the law to them in every branch, which latter duty devolves on the barrister.

That there has been no public demonstration or expression of opinion, other than the above mentioned,—no complaint has been made against your petitioners' branch of the legal profession, and your petitioners have been informed, and have good reason to believe, that the memorial emanated from two individuals only, and that by means of house to house solicitation, and friendly persuasion, several of the memorialists were induced to subscribe the memorial, in the belief that the solicitors of Hongkong were favourable to the amalgamation, and many who could know nothing of the effect of the proposed change, added their names for the simple reason that others had signed before them, and your petitioners affirm that such memorial is no reasonable or intelligent reflection of the matured opinion of any part of the community possessing competent information on the subject upon which they solicit the interference of the Legislature, and that, moreover, but few of them have law business of any magnitude to transact.

That your petitioners submit, that even if such memorial were a *bonâ fide* exposition of the sentiments of the community, it was, having regard to the want of representation in the Colony, an unconstitutional course to adopt, with a view to such an important legislative measure as the destruction of the relative distinctions between barristers and solicitors, without reason or evidence, and without regarding the rights of those most interested in the question, and your petitioners humbly but firmly remonstrate against the fact, that two members of the Legislative Council were the first to sign a memorial to the Attorney-General, himself a member of the Council, and not a disinterested person in the present question, to solicit an alteration which they themselves would, in their legislative capacity, be called upon to make,—the

petitioners assert, the principal, if not sole cause, of the signatures which followed, and tending materially to influence other members of the Council.

That bearing in mind the fact, that the barrister in this Colony has to undertake advising in *every* branch of the law, your petitioners submit that the necessity for a division of the profession is *greater* here than in England, and that the advocacy of "unrestricted competition" in legal knowledge between barrister and attorney, in the circumstances above detailed, merely shows that those who advocate it have not made themselves competent to form a judgment on the subject.

That your petitioners believe the memorial to have originated in a spirit hostile to their branch of the profession,—covertly supported by certain members of the bar, and the real object of the memorialists is to benefit those members of the bar at the expense of your petitioners,—a real and complete amalgamation being, as your petitioners submit, simply impossible, and an imaginary one, being destructive of the rights and privileges of your petitioners, to which they are entitled in exchange for their disabilities, the supervision by the Courts in which they practise of their conduct and charges, and a laborious and expensive training.

That your petitioners doubt the competency of a Colonial Government to make the change proposed, but they humbly submit that, before any attempt should be made at legislation on the subject, your Honourable Council should appoint a Committee to take evidence, before which Committee the persons who signed the memorial, and others could be examined, and state their views and grievances, and your petitioners might be allowed to defend themselves against that which is intended to cause destruction to their branch of their profession, without giving them any compensation, and deprive them of the undoubted right of every Briton, that of being heard before being condemned.

That, as an additional reason for proceeding with all caution in such a proposed change, your petitioners would beg respectfully to call the attention of the Council to the fact that, in Canada, where an amalgamation of the profession nominally, although not really, exists, a call is being made at the present time for a distinct *separation* of the two branches.

Your petitioners therefore humbly pray that the said memorial and this petition may be referred to an independent Committee or Commission to take evidence, and report thereon, before any attempt be made to legislate on the subject of the memorial. And your petitioners in duty bound will ever pray, etc.

THE HONGKONG LAW SOCIETY,
By their Secretary,
EDWARD K. STACE.

5th June, 1858.

The Chief Justice presents the memorial of the Hongkong Law Society to the Council.

The Governor lays on the table the draft of 'An Ordinance for Practi-

On the 10th June, the Chief Justice by leave presented the foregoing memorial to the Council, which, after having been read, was ordered to be printed. On the same day the Governor laid on the table the draft of "An Ordinance for Practitioners in Law" which was read a first time. The Council then adjourned to the 12th June. On that day, after the minutes of the last meeting had been read and approved, the Attorney-General remarked that notice of the most important part of a

Chap. XXII. 1858.

The Governor read some correspondence which had taken place with regard to Mr. Parsons having been deputed by the Hongkong Law Society to represent them before the Council.

Discussion upon the memorial and as to Mr. Parsons having been deputed by the Hongkong Law Society to represent them.

A letter from Mr. Parsons was read, stating that, although the printed accounts of what he had said to the Council were pretty correct, they were not altogether so; that Mr. Woods had stated to Mr. Gaskell the same reason for signing the petition as to himself, viz., that it was because he had seen the names of so many great houses down, and that Mr. Woodruff assigned the same reason. A letter from Mr. Cooper Turner was read to the effect that he had read the memorial of the Hongkong Law Society hurriedly, and returned it accompanied with a note, stating he thought it would do, with one or two exceptions—the letter not stating what exceptions. Discussion followed with regard to the exorbitant charges of lawyers in Hongkong, and instances were cited in which Europeans had interested themselves in Chinese cases, and had got their bills taxed—one case, where the charge was reduced from $250 to $70.

Exorbitant charges of the lawyers discussed.

The Governor and Mr. Anstey upon the Chinese.

The Governor stated that he felt for the Chinese who had to pay so exorbitantly, and called upon the Council to assist him in making the law as cheap as possible.

The Attorney-General remarked, that he formerly wished to introduce a wholesale system of taxing, by which, if a lawyer's bill, when taxed, should exceed the scale by one-sixth, he should forfeit his fees, and have to pay all costs; and that it was the abominable cowardice of the Chinese which prevented them from taking advantage of the present system.

Mr. Jardine proposed that an advertizement should be inserted in *The Government Gazette*, concerning the taxing of lawyer's fees.

The Ordinance for Practitioners in Law.

The Governor then put the question that the Ordinance "for Practitioners in Law" do pass.

| (*Ayes.* 8) | (*Noes.* 2) |
|---|---|
| Mr. Dent. | Chief Justice. |
| Mr. Lyall. | Colonial Treasurer. |
| Mr. Jardine. | |
| Surveyor-General. | |
| Chief Magistrate. | |
| Attorney-General. | |
| Acting Colonial Secretary. | |
| Lieutenant-Governor. | |

The Hongkong Law Society heard in Council.

At the adjourned meeting of Council on the 15th June, the Chief Justice moved, seconded by the Attorney-General, and it was carried unanimously,—"that on the question for the second reading of the 'Ordinance for Practitioners in Law,' the Hong-

that the Council then receive such evidence as the petitioners may then produce in support of their petition."

First occasion on which press reporters attend the Legislative Council.

Accordingly, on the 24th June, the Council met pursuant to adjournment. It was the first time, since the date of its constitution, that the Legislative Council was attended by members of the Press. The Governor being absent on account of ill-health, a letter was handed to the Council by the Lieutenant-Governor, written by Sir John Bowring, requesting that in his absence the chair should be taken by Colonel Caine, the Lieutenant-Governor, which was accordingly acted upon. The following is a condensed report of the proceedings in Council relating to the discussion which took place on the question of the amalgamation of the two branches of the legal profession when Mr. Parsons was heard on behalf of the Law Society. The discussion is also of interest as showing that at this period the Court had, as yet, no library worthy of the name, if at all, and that Government made no contribution towards one, although some years back, Chief Justice Hulme had started a law library by presenting some of his own valuable books.*

"The minutes of the last Council were then read. This day being appointed for taking the evidence on the amalgamation of the branches of the legal profession, Messrs. Parsons, Hazeland, and Stace were present in support of the 'Hongkong Law Society,' and at the suggestion of the Attorney-General were permitted to be heard.

Mr. Parsons said that he had been deputed to speak for the Law Society on this occasion, and as he had had no notice whatever of this meeting, he felt himself in an awkward position, as he had not yet been able to give any time for preparations he might have wished to make. As no one was present either to take their evidence, or to report that evidence, they were under many disadvantages. He was called on to defend his profession, and as he considered the motion in contemplation was most unconstitutional, he simply asked a fair hearing. The public were about to take away his life, for they were going to do what was as bad, take away his means of livelihood, and to destroy his prospects entirely, and the object was merely to substitute barristers for attorneys. It was true that the Council had been memorialized on the subject, but in what way was the memorial got up? He would go through the memorial. The amalgamation had been moved by Mr. Douglas Lapraik and Mr. Edwards, and Mr. Douglas Lapraik and Mr. Dixson, of *The China Mail*, had carried it about for signature. The names of many firms appeared, whereas, in most instances, only individuals were actually meant. 'In the multitude of councillors there is safety.'† The memorialists seek to reverse that maxim. He usually sent his clients to counsel for that reason, and never objected to their seeing each other. He had introduced them to counsel so frequently that if the amalgamation should occur he should lose all his clients. The attorneys had actually taught their clients to think the barristers better than themselves. Then counsel were admitted into society from which attorneys were excluded [*sic*]. What will result? Why personal friendships have sprung up, and if the amalgamation occurs the bar will get all the business. The idea of fusion was absurd. But this measure went further still. It actually usurped the functions of His Grace the Archbishop of Canterbury. It makes an attorney a notary.

* See *ante* Chap. VIII. § I. p. 161.

Chap. XXII. [The Attorney-General denied this.]

1858. Mr. Parsons said if documents went Home, and the notary's name were not on record there, they were worth nothing.

[The Attorney-General asked how that would affect foreign tribunals?]

Mr. Parsons doubted the power of a Colonial Government to affect them. The measure should have emanated from Home. It was not competent for the Council to deal with it. Besides, the memorial assigned no reasons for the measure. As far back as the reign of Henry III., there was a law which spoke of attorneys, and in the reign of Henry IV. there was a law making an examination for an attorney imperative. It showed what an ancient class of men attorneys were, and surely men of such high standing should not be lost sight of, without some better grounds than simply the instigation of a class of ignorant men.

[*The Attorney-General.*—When the Colony was first established any one was allowed to practise as an attorney in the absence of legitimate practitioners.] *

*Mr. Parsons* continuing:—*They had no right whatever to starve any member of his profession.* The house of Mr. D. Lapraik was the rendezvous of all gossiping gentlemen. The gentlemen, who were the principal movers in this amalgamation, had been cunning enough to keep their names away from the head of the list, knowing that, when seen, it would instantly condemn them; but although this had been done, they had not been wise enough to separate their names. He thought, as any person else would think, that the order of signature would have had some reference to the locality of those signing; but on looking down the list about half-way would be seen (all together) the names of Mr. Douglas Lapraik, Messrs. Edwards & Balley, and A. Shortrede & Co., the latter signed by Mr. Dixson, who perhaps was not aware that his partner was altogether opposed to such a step as this amalgamation. He could not suppose that Messrs. Dent, to whom he was standing solicitor, intended to abolish him, although their names appeared at the heading of this *sham list.* He had made it his business to ask all he met why they had signed this, and went as far as to ask some passengers he occasionally met in the steamers the same question.

There were two parties who had signed the memorial, and he very much questioned their right so to do; one, Mr. Cohen, in the absence of Phillips, Moore, & Co., and an assistant of Messrs. Bowra & Co. The memorial was signed without any reason by those who signed it.

(The Chief Magistrate then asked Mr. Parsons, if he meant to infer that the firms who had signed this memorial had done so, not believing all the while in what they were signing. Give us some palpable case, said Mr. Davies, and then we shall better understand you.)

Mr. Parsons replied by doing so *instanter*, and commenced with the firm of Messrs. Pustau & Co. Mr. Brodersen, their representative, merely said he did not know that the attorneys were opposed to it, and he had signed because the other principal firms had done so, and on explaining the matter, Mr. Brodersen proved entirely ignorant of the whole affair. With reference to Messrs. Birley & Co., he asked the representative of that firm why he had signed it; why he had signed in fact his (Mr. Parson's) death warrant? The answer was, "why don't you have all the same charges," or something to that effect?

Mr. Parsons brought another case forward: he had asked Mr. Woods why he had signed it. "Oh," said he, "I saw so many *great names* already down, I put mine down too, as I do not like to be behind hand." Mr. Gibb, on being asked, said, he was induced to sign the memorial,

because he had been led to believe that the attorneys were not opposed to it. (The Attorney-General here asked Mr. Parsons to give his authority for this statement.)

Mr. Parsons gave Mr. Stace, who, on being asked, said he had heard so, but not directly from Mr. Gibb.

Dr. Bridges wished to know why the attorneys had not presented a counter memorial.

Mr. Parsons said they were not aware of a memorial having been drawn up until they saw it in *The Government Gazette*, and that the moment they did see it, they challenged those concerned in it in the very next *Government Gazette* to give proof, but that that proof had not been forthcoming. Mr. G. Duddell, a clear-headed and clever man, told Mr. Cooper Turner that he only signed it, on the express understanding that Messrs. Jardine should sign it; and, moreover, said that he was entirely opposed to it.

Mr. Parsons continued:—Here we come to somewhere about twenty-four Parsees. What on the face of the earth *can* Parsees know about barristers and attorneys? How can they know their different distinctions? We all know that they are very frugal people, and to say that a Parsee did not look after his coffers, was equal to saying a Chinaman did not care for a dollar; and that this memorial results in the signature of many gentlemen *who might have known what they were signing, if they had only taken the trouble to inquire.* Even the members of the Council, unless they were those connected with the legal profession, could not possibly know the relative duties of barrister and attorney. He would reduce the signatures to the English members, rejecting Parsees, Frenchmen, Americans, and such like, and then what would it come to, as these parties could not be supposed to know much about the English legal distinctions.* Mr. Parsons here expressed his opinion, that the case ought to be referred to a Committee, chosen expressely for the purpose, and composed of disinterested parties.

The Attorney-General asked, who were more proper persons than the Council.

Mr. Parsons thought that Mr. Anstey, for one, should not form one of the Committee, as he certainly was not a disinterested party.

The Attorney-General here moved to the Chairman, that he should put a stop to such personal allusions to members of the Council, as Mr. Parsons did not appear there to question what they were doing.

The chair here admonished Mr. Parsons, who apologized for what he had said, and proceeded.

At this stage of the proceedings a conversation arose, from an observation made by Mr. Parsons, who said that it would cost him a good round sum yearly to keep up his law library.

The Attorney-General said it only cost him about £10.

Mr. Parsons: "Yes; but you forget what an excellent library you have in your head, and therefore do not require so many books."

The Chief Justice said, his library cost him £70 to keep up per annum.

The Lieutenant-Governor, who had previously complained of indisposition, was here obliged to withdraw.

The Chief Justice proposed an adjournment at once "*sine die.*"

The Attorney-General moved that a Committee be now formed to continue the proceedings, and that it do now consist of all the members present.

The Chief Justice opposed it; the members divided,—all voted "Yes," with the exception of the Chief Justice, and the motion was carried.

The Attorney-General then moved that the Chief Justice should take the chair, which was seconded by the Chief Magistrate, and acted upon.

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* This impertinent allusion to the Parsees and other 'ignorant residents' called forth the most vehement remonstrance from the local press at the time.

Chap. XXII. — 1858.

Mr. Parsons then proceeded and said, that on account of having had no time he could not give such satisfactory evidence as he wished, as it was only half an hour before attending the Council, that he had been deputed to speak. Mr. Parsons then brought forward, in a rambling manner, technicalities and examples.

The Attorney-General here made a lengthy speech concerning attorneys, etc., in the Reigns of Henry III. and George IV.

Mr. Parsons mentioned a letter he had heard of, which had appeared in *The China Mail*, which he had been told was written by Mr. Lapraik, and thoroughly revised by the Attorney-General.

The Attorney-General, with great warmth, at once denied this accusation, and said, that whoever said it, it was *a scandalous falsehood*. He then said, and *for the last time*, that Mr. Parsons should not be allowed to say such things, and make such personal attacks; that Mr. Parsons had been warned of it before.

Mr. Dent here spoke and said, that Mr. Parsons had far exceeded his license of speech, and that what he said was most scandalous.

The Chief Justice here interposed, and suggested to Mr. Parsons, that he should confine himself entirely to matters connected with the purpose he was present for.

The Attorney-General here demanded of Mr. Parsons, the name of the party who had informed him concerning the letter, and after some little hesitation Mr. Parsons gave the name of Mr. Moresby.

The Attorney-General instantly despatched a note to that gentleman, which, however, failed in bringing him to the Council Room.

Mr. Parsons then made very ample apologies to the Attorney-General and other members of the Council, for what he had said. He then proceeded to read a letter from the Upper Canada Law Journal, showing that a call had there been made to separate the two branches of the profession.

The Attorney-General then wished to know whether Mr. Parsons had any evidence to bring forward (except that anonymous letter just read) in support of what they stated in their petition, about a 'call' having been made, to which Mr. Parsons replied they had not at present, but might be able to do so if time were given them. Here Mr. Parsons made a long speech concerning Ordinances, etc., and read the oaths that a Notary Public had to take before the "Archbishop of Canterbury."

The Ordinance concerning "Practitioners in Law" was then gone into by Mr. Parsons and the Attorney-General.

Mr. Parsons said here, that their prayer simply asked that a Committee be formed to receive any evidence the "Law Society" may be able to produce; should this be denied them, their only alternative will be to petition the Secretary for the Colonies to reject the Ordinance, so that it should not be brought to bear upon the attorneys. Mr. Parsons having nothing further to say, the Committee adjourned till twelve o'clock of Tuesday, the 6th instant.

Before leaving the room, the Attorney-General said, that Mr. Moresby not having vouchsafed to either answer his (the Attorney-General's) note, or to appear personally, the slander rests on his head, and that his honour would not benefit by what had been said."

At the conclusion of Mr. Parsons' speech, it was unanimously resolved that the Committee report progress to the Council, and the Committee then broke up.

The whole Colony calls for amalgamation.

Certainly the mercantile community were much better judges of what was best for it in this matter than the interested and alarmed attorneys, and for once the whole Colony called for the

change. It may not be inappropriate therefore to reproduce here what was said on the subject by the leading exponent of public opinion at the time and which is so much to the point :—

The local press upon the subject.

"What is there gained by keeping the two branches separate in this place? There are no such great demands made on the legal knowledge and acumen of either branch that either, in order to accomplish its work properly, need confine itself to its peculiar department. The very alarm of the solicitors is an indication that the present division is not founded on the requirements of the Colony, but is only sustained artificially. We are not aware of the nature of the 'call' which is said to be made in Canada for a separation of the two branches, but it is evident that, as regards the matter in hand, that old colony, with its large cities, cannot be any rule for this, except in so far as it proves that even an old and populous colony can advantageously dispense with the separation.

The solicitors advance 'the supervision of the Courts, in which they practise, of their conduct and charges' as entitling them to exclusive privilege in their branch of the legal profession. Is this not like a criminal putting forward the fact of his confinement as entitling him to levy toll on all visitors to the gaol? When the Court, as it did lately, has to cut down a solicitor's charges from $255 to $47, it is evident that the necessity of this restriction exists among the solicitors themselves, and that so far from entitling them to any exclusive privilege, it constitutes a very strong reason why they should not have any monopoly secured to them.

We have been so sickened with Committees and Commissions of late* that there is no chance of the petitioners of the Law Society having a Committee before which they might be allowed to defend themselves, but if such an opportunity were given, their memorial and petition would be among the most damning documents that could be put in against them."

Meeting of the Legislative Council upon the amalgamation question.

The Legislative Council re-assembled on the 6th July, Mr. Parsons being present, and now came the farce. Mr. Parsons, it appeared, had really never been deputed to represent the attorneys as a body, quite apart from the way in which the memorial alleged to have emanated from the Hongkong Law Society, was alleged to have been got up, and he now met with his deserts, being practically turned out of the Council room.

Mr. Parsons disowned by the Hongkong Law Society, and ordered to withdraw from the Council.

The Attorney-General said that he was prepared to show, that the Council had been imposed upon at its last meeting; and he then produced and read a letter from Mr. Cooper Turner, saying that Mr. Parsons had not, at any meeting of the Law Society, been deputed by that Society to speak for them in their behalf.

Denial of certain attorneys as to Mr. Parsons representing them.

His Excellency the Governor then read a letter from Mr. Hazeland, saying he was not a member of the Law Society, and denying his concurrence in their petition.

* There had been actually two Commissions appointed recently, one to inquire into the charges against Dr. Bridges, the acting Colonial Secretary, regarding the opium monopoly (*antè* Chap. XXI., p. 472), and the other still pending (Chap. XXIII., *ubi suprà*) into the charges brought by Mr. Anstey against Mr. Caldwell, the Registrar-General.

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A letter was then read also by His Excellency from Mr. Woods, denying *in toto* that Mr. Parsons had asked any question of Mr. Woods relating to his signature to their petition, and denying that he had given the answer ascribed to him.

The Chief Justice reported progress of the proceedings had at the Committee on the 29th June, and the following account shows how the petition, alleged to have emanated from the Hongkong Law Society, was finally dealt with :—

The Governor then inquired of Mr. Parsons, who was in attendance, whether, having finished his address, he was now prepared to complete the evidence in support of the petition.

Mr. Parsons stated that, finding himself disowned by the Hongkong Law Society, he must decline to take any further trouble in the matter.

The Governor then reprehended the conduct of Mr. Parsons, and on the motion of the Attorney-General, ***nemine contradicente***, he was ordered to withdraw from the bar.

No other person appearing in support of the petition, or otherwise,

It was moved by Mr. Dent, and seconded by the acting Colonial Secretary,—

"That it appearing that neither the attorneys or solicitors of Hongkong in general, nor the Hongkong Law Society in particular, authorized Mr. Ambrose Parsons, one of their number, to appear at the bar of this Council, in support of a petition purporting to be signed by Mr. E. K. Stace, for and as Secretary to the Hongkong Law Society, being the only petition which has been presented against the Ordinance for Practitioners in Law ;

And it further appearing that the said petition did not in fact emanate from, nor was authorized by, the said Society ;

And it further appearing, that the said attorneys and solicitors in general, and the said Society in particular, did nevertheless tacitly connive at the said unauthorized assumptions of the said Messrs. Parsons and Stace, by not repudiating them, nor even protesting against the highly contemptuous and improper language and tone of the speech made by the said Mr. Parsons at the bar of this Council in pretended support of the said petition, and in the name of the said attorneys and solicitors, and of the said Society ;

And lastly it appearing that the parties concerned in the said petition have not only failed to substantiate any one of its allegations, but have themselves disproved some of them :

The Council declare the petition a fraud upon its privileges.

The Council declares the said petition to have been a fraud upon its privileges, and rescinding its former order that the same do lie upon the table, determines to proceed to the second reading of the said Ordinance."

Correspondence relative to Mr. Parsons' conduct and the alleged petition from the Law Society

This done, the Governor stated he would propose the passing of the Ordinance at the next meeting of the Council on the 12th July. On this date the Council again met. At this meeting the following correspondence was referred to and read :—

(1.) A letter, of the 8th July from Mr. Parsons to the Governor, reiterating his assertions, that Mr. Woods stated to himself and Mr. Gaskell, that he

(2.) Also, a communication of 8th July, from Mr. Gaskell to Mr. Parsons, corroborating the said assertions, and giving the additional statement as made to them by Mr. Woods, that he thought the change would benefit their branch of the profession.

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Read a letter, of the 7th July, from the acting Colonial Secretary calling upon Mr. Cooper Turner, as Crown Solicitor, for an explanation of the inconsistency between his letter of the 4th June to Mr. Parsons, and that of the 26th June to the Attorney-General, as well as with the statements made in his name by the said officer.

(3.) Reply, of 10th July, from Mr. Cooper Turner, to the following effect:—"That he was not present at the inception nor at the drafting of the petition; that the same was sent to him in a hurried way for his perusal, and he returned it without considering it much at the moment, with the note dated 4th June last,—'I think the petition will do well,' there being no objection whatever to some portions.—That in using those words he did not intend to give an unqualified approval, or debar himself from giving the matter further consideration or reflection,—for on the same day, or the following morning, having well considered the matter, he had an interview with the acting Secretary of the Hongkong Law Society, and stated to him that he dissented, for many reasons, from the petition; that some of the points were good, but that if the statements therein could not be proved, it would militate much against them. That he also expressed his dissent to two of the profession. That the letter to the Attorney-General, dated 26th June, had reference generally to the above interview. That with regard to the statements made by the Attorney-General in Council, he could offer no remarks, as he was not present, nor had he been informed of them. As to the address of Mr. Parsons to the Council,—that he (Mr. Turner) was not aware that gentleman was deputed by the Law Society to protect the interests of the profession, or that there was a meeting called for that special purpose."

Read a letter, of the 9th July, from Mr. Stace, stating, with reference to the letters from Messrs. Turner and Hazeland, read at the last meeting of Council,—"That all the members of the Hongkong Law Society concurred in selecting Mr. Parsons to address the Council in support of the prayer of their petition.—That Mr. Turner promised to accompany Mr. Parsons and himself to the Council room, but afterwards deputed Mr. Hazeland to attend in his stead, who" (Mr. Stace remarks) "made no disavowal at the time."*

(4.) Draft letter, of this date from the acting Colonial Secretary to Mr. Cooper Turner, acknowledging his letter of the 10th instant, and forwarding for his explanation copy of Mr. Stace's letter of the 9th instant above referred to.

(5.) Letter from Mr. Douglas Lapraik to the Clerk of Councils, forwarding an original communication from Mr. Parsons to himself, dated the 24th March, 1858, on the subject of his bill of costs and allocatur as attorney for Chinkoo,—wherein Mr. Parsons states that Magisterial business is no matter of taxation; that he informed Chinkoo that his charge was $25 a day for attending, and that he agreed to those terms.—That, as there were many days in which nothing was done, he had charged only $15 on those days."

The Governor's remarks upon the enormous charges imposed upon the

After the reading of the above correspondence and in reference to the last-quoted letter, the Governor remarked upon the necessity of checking the practice still going on of such enormous charges being imposed upon the Chinese; and, on the

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motion of the Chief Justice, it was resolved, that a notification in the Chinese language be published in *The Government Gazette*, announcing to the Chinese that bills of costs are taxable by the Registrar of the Supreme Court as Taxing Master, and that they should apply to him when necessary.*

Resolution on motion of Chief Justice that Chinese be notified in *Government Gazette* that bills of costs are taxable.

The Attorney-General then inquired whether the Secretary of State, in his despatch conveying the recent confirmation of Ordinance No. 13 of 1856 [An Ordinance for the admission of candidates to the rolls of practitioners in the Supreme Court and for the taxation of costs], had made any remarks on his report of the 8th February last, upon the operation of the said Ordinance,—the inference from this question therefore being that the Government had adopted the course of not communicating to Mr. Anstey the views of the Home Government as regards the Ordinances passed by the Legislature, and which, it will be remembered, had been the cause of an unpleasant scene between Mr. Anstey and Dr. Bridges in open Court in May, 1857.†

Mr. Anstey and Ordinance No. 13 of 1856.

The Governor stated that Lord Stanley had made no remarks on such report. His Lordship only referred to certain doubts entertained by his predecessor, but had thought proper to allow the Ordinance without any change. The Ordinance "for Practitioners in Law" was then passed and numbered 12 of 1858. This enactment was neither more nor less than an Ordinance to empower barristers to act as attorneys. The barrister relinquished none of the privileges except that of being heard in Court, in the event of a case coming to trial.‡ With the passing of this Ordinance, ended another of those stirring episodes for which the year 1858 will ever stand out so prominently in the annals of Hongkong. §

Ordinance No. 12 of 1858 'for Practitioners in Law' passed.

The outcome.

Whilst the inquiry into the amalgamation question was being held by the Council and a Commission actually sitting upon the charges, hereinafter referred to, which he had brought against Mr. Caldwell, the Registrar-General, Mr. Anstey renewed his application, of February last, to the Governor for a policeman for his special protection. ‖

Mr. Anstey renews his application for Police protection.

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* No such Notification appears to have ever been published.

† *Antè* Chap. XVIII., p. 432.

‡ With reference to the conduct of Mr. Parsons, in particular, regarding this matter, at a meeting of the Legislative Council on the 4th October, the Clerk of Councils read a letter from Messrs. Cooper Turner and Hazeland, repudiating Mr. Parsons' opposition to the Ordinance amalgamating the branches of the legal professions, following which a letter from Mr. Parsons was read denying that he had been ordered (as was stated in the proceedings of the Legislative Council published in *The Government Gazette* of the 9th October) to quit the bar of the Council room. Following this came a letter from Mr. F. Woods, complaining that upon the above occasion Mr. Parsons had placed an improper construction upon a conversation that had occurred between them. See further as to Mr. Parsons, Chap. XXXI., *infrà*.

§ Upon the subject of the two professions, see further Vol. II., Chaps. XXXVII., XXXVIII., XLIX., LVIII.

‖ See *antè* Chap. XX. § II., p. 465.

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On the 18th June the Governor caused Mr. Anstey to be informed that "he could not allow a special policeman to the Attorney-General on the ground of his occupying a solitary house, with which the Government had nothing to do, but the Police may be instructed to do what they were able in the distribution of their force." Dissatisfied with this reply, Mr. Anstey addressed the Secretary of State, as he feared the attacks of the Chinese, going into extraneous remarks and concluding with the remark that "Mr. Caldwell, the Registrar-General, had two Police Constables told off every night for night duty at his house, besides a third who had leave to sleep on his premises."

The Governor's reply.

Mr. Anstey addresses the Secretary of State, and alludes to the constables allowed to Mr. Caldwell.

On the 12th July, 1858, the Standing Rules and Orders for the Legislative Council were published,* the Standing Rules and Orders of the 7th March of the present year being rescinded. On the same day the Attorney-General in the Legislative Council signified his intention of opposing such portion of the expenditure as related to the establishment of the Registrar-General, as he considered it a *sinecure office.*

Rules and orders of the Legislative Council published.

Rules and orders of 7th March, 1858, rescinded.

Mr. Anstey states in the Legislative Council that the Registrar-General's office is a sinecure.

The pawnbrokers, considering that the licences demanded of them were of too exorbitant a rate, decided to close their shops. After this they proceeded to take down their signboards as a sign of determination on their part to oppose the Government, in which, however, there is nothing to show that they proved successful.

Pawnbrokers attempt a demonstration, considering their licences exorbitant.

The authorities having received information that increased watchfulness on the part of the public was necessary, the Superintendent of Police, Mr. May, by direction, on the 24th July, having regard especially to what had recently happened to Mr. Hazeland,† notified that great caution was necessary in walking or riding far away from the town unarmed or alone, and that night passes heretofore issued to Chinese to be in the public streets up to nine, would for the future be valid in effect only to eight o'clock. The inhabitants of the Colony were now thrown into a fervent state of anxiety, owing to the condition of affairs prevalent consequent upon our relations with China. No work of any kind could be got done—tailors, shoemakers, carpenters, and artisans of every kind had departed from Hongkong, and it was calculated that no less than twenty thousand persons had taken their departure from the island. Food was, moreover, at almost famine prices, and an entire stoppage was threatened of the usual supplies of provisions for the markets. Sir John Bowring had been several times approached as to the state of things and as to the inefficiency of the Police, but he

Police warning as to increased watchfulness by residents necessary.

Caution as to walking or residing far away from town.

Night passes.

Hours reduced.

Condition of affairs in Hongkong consequent upon relations with China.

* These were in the nature of "extracts from the Royal Instructions to the Governor of Hongkong, dated the 6th April, 1843."

† *Antè* Chap. XXI., p. 478.

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had done nothing. It was no wonder therefore that as a first measure the community decided to memorialize him upon the subject.

Police inefficiency. The residents memorialize the Governor and ask for prompt remedy.

The inefficiency and condition of the Police Force, it may be added, had also been represented outside the Colony. A local correspondent of *The Straits Guardian*, in a letter to that paper dated the 27th February, 1858, had thus previously expressed what he termed "the unanimous verdict of the inhabitants of Hongkong" in the matter. He said :—

*The Straits Guardian* on the condition of the Police Force.

"Until the middle of last year, the clothes of the men were for the most part ragged, greasy, and patched ; many had the legs of the trowsers so short that the whole of the ankles were visible ; some wore boots in one of which they could have put both legs ; it thus became a heavy labour to carry them, and to run in them was quite out of the question ; their boots, moreover, were old and shabby, the toes or heels of the men protruding through the leather, and as for polish, 'it was nobody's business to look after that.' The men made as much noise walking in these boots as a troop of cavalry would in going over the same rocky ground. So much for their dresses. As for the 'superior class.' Of the one hundred and fifty or one hundred and sixty Portuguese and India men, about twenty-five or thirty were natives of Goa or Macao ; the others were and *are now* all discharged Bengal seamen, for the most part totally *unfit for any service*, as is evidenced by the hospital reports. And to crown the whole a Mr. May is at the head of that 'respectable' squad,—a man who has been upwards of twelve years at its head, without being able to address any of his subordinates in his now language ; in fact, he cannot speak a word of any other language but English ; the inefficiency of the force speaks volumes against his capacity and ability. His father was the most noted of the London superintendents,* but the son .....

We have little to say with respect to the European portion of the Hongkong force. There are thirty-two Europeans ; their pay amounts from $14 to $20 a month. They cannot speak to their subordinates but in broken and barbarous English, for anything better would be quite unintelligible to the men."

It does not appear this time, as in the case of a former anonymous letter in *The Straits Guardian*, that Mr. Murrow was accused of being the writer.†

The memorial of the community.

The following was the memorial of the community alluded to above, relating to the condition of affairs in the Colony and "the inadequate state of the Police Force under the circumstances" :—

Hongkong, 29th July, 1858.

Sir,—It cannot but be well known to Your Excellency that during the past week or two, vast numbers of Chinese residents, including shopkeepers, traders, domestic servants, and the labouring population, have taken their departure from this Colony ; and the movement of which this is only one symptom, appears to us of so serious a nature that we feel urgently called upon to solicit the prompt application of some remedy to it on the part of the Colonial Government.

It is sufficiently notorious that this flight from the island is occasioned by menacing notices, issued by, or through the instigation of the Shunkum,—an

* See Vol. II., Chap. LXX.
† See *antè* Chap. XIX., p. 447.

association of gentry professing to represent the population of the Kwang-tung Province, but believed to be guided by a knot of leaders at or near Canton.

Whether this self-constituted authority has of late acquired greater influence than formerly, or whether its menaces upon the present occasion are of a more intimidating character than usual, it seems certain that its orders are likely to be much more universally and implicitly obeyed than on any previous occasion of a similar nature in the history of the Colony. We are assured, and have the best reason to believe, that within a very few days from this time, if the movement is not adequately checked, nearly every Chinese from the neighbouring districts now in the employment of foreigners will be compelled to return to his home, thereby occasioning the greatest personal inconvenience to every individual of the community, and completely paralyzing all the ordinary operations of intercourse and daily life. We are threatened, moreover, with an entire stoppage of the usual supplies of goods, which are derived from various points of the mainland, constituting, in fact, the whole provision of our markets. From a very partial application of the measure up to the present time, the price of provisions has risen enormously, to the serious detriment of the inhabitants, both natives and foreigners; and we feel perfectly persuaded that these threats are of no empty character, but both as respects the departure of our servants, and the stoppage of our supplies, will be rigorously carried into effect. We are apprised through the personal communications some of us have had with Your Excellency, that your hands are to a certain extent tied, as respects measures of any nature to be taken against Chinese other than residents in the Colony. At the same time we feel satisfied, that strictly local measures are wholly inadequate to meet the existing emergency, when the bold front of resistance that has of late been displayed to the Allied occupation of Canton is now extended into aggressive acts against this Colony, and indeed against foreigners wherever they are to be found, as in the neighbouring neutral settlement of Macao. The proper regulation of this, and all other kindred matters, undoubtedly rests with the supreme authority in the person of Her Majesty's High Commissioner, the Earl of Elgin and Kincardine; in whose absence, we would most earnestly press it upon Your Excellency's consideration, that this is one of those extreme occasions in which the local representatives of Her Majesty's Government are imperatively called upon to exercise an unusual responsibility in order to provide for the general welfare and safety.

A strong additional inducement for resolute interference, lies in the moral effect that a policy of simple inaction would produce in the minds of the Chinese resident here.

If the present movement is allowed to pursue its course unprevented, we shall be exposed to a repetition of the evils now complained of, on every occasion when real or fancied offence may be given to the gentry of the neighbouring province, or the faction they represent; so that the Chinese will lose all confidence in the rigour of our rule, when they see us helpless to protect them from the arbitrary mandates of their own countrymen, simply because these are not issued within the bounds of the Colony.

We have been in communication with Chinese of respectability and influence, who can have no motive to deceive us in such circumstances as now exist; and we are led to believe from their representations, that the panic in which they must unwillingly participate might to a great extent be allayed were a stringent Proclamation issued by Your Excellency without a moment's delay, stating, that if the present exodus of the Chinese population continue, (more especially in the case of those who have contracted engagements by entering the service of foreigners) and if the slightest attempt be made to

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take retaliatory measures against the offending districts, and more particularly against those of Heang-shan and Sun-on, with the view of destroying these places, and if need be the surrounding villages.

In the belief that the best effects would attend the announcement of a prompt measure of this nature, we earnestly hope that the emergency will appear to Your Excellency sufficiently grave to warrant its being at once undertaken.

We trust Your Excellency will obtain the willing co-operation of the Naval and Military authorities in a matter of so much moment, and we will readily afford to Your Excellency any support which it may be in our power to give at this critical juncture.

In conclusion, we beg to draw Your Excellency's attention to the inadequate state of the Police Force under the existing circumstances; and we would further point out to Your Excellency the fact of numerous hongs and houses being untenanted, and which, unless daily visited, might be the means of affording shelter to evil-doers.

We have the honour to be, Sir, your most obedient servants,

(Signed) Jardine, Matheson, & Co.; Dent & Co.; Lindsay & Co.; Fletcher & Co.; Gilman & Co.; P. Campbell, Manager, Oriental Bank Corporation; Neave, Murray, & Co., *in liquidation*; John Costerton, Manager, Mercantile Bank Corporation; Gibb, Livingston, & Co.; *per pro.* Blenkin, Rawson, & Co., Fred. W. Goss; *for* Birley & Co., Fred. T. Smith; Henry Turner, Manager Agra and U. S. Bank; Lane, Crawford, & Co.; Henry Kingsmill, B.A.; *per pro.* Phillips, Moore, & Co., P. Cohen; G. Harper & Co.; Benjamin Seare; David Sassoon, Sons & Co.; P. & D. N. Camajee & Co.; R. H. Camajee & Co.; Van der Hoeven & Kup; P. F. Cama & Co.; A. L. Agabeg, Jr.; A. Gibson; Walter Toms; N. Duus; John Rickett; J. Williams; Eduljee, Framjee, Sons & Co.; D. N. Mody & Co.; A. Shortrede & Co.; Sorabjee Hurjeebhoy; M. Pestonjee; D. Lapraik; Bowra & Co., *per* W. H.; G. H. Heaton; D. W. MacKenzie & Co.; Alfred Wilkinson; H. Duddell; F. Woods; Ambrose Parsons; Framjee, Byramjee, Metta & Co.; J. B. Watson; B. Kenny; Turner & Co.; R. S. Langrana; E. Soomon, *per* B. S. L.; Holliday, Wise, & Co.; William Tarrant; McEwen & Co.

His Excellency Sir JOHN BOWRING, LL.D.,
*etc.*, *etc.*, *etc.*

The reply of the Governor as to measures taken for the protection of the Colony.

On the 30th July the memorialists received the following reply:—

COLONIAL SECRETARY'S OFFICE,
VICTORIA, HONGKONG, 30th July, 1858.

Gentlemen,—His Excellency the Governor has received your communication dated yesterday on the subject of the injuries inflicted on this Colony by the hostile action of the Chinese, and representing the urgent necessity of prompt and decisive measures for the protection of the Colony against proceedings threatening to its peace and prosperity.

But the diplomatic powers of the Governor are wholly suspended until the mission of His Excellency the Earl of Elgin shall have terminated all existing questions and differences with the Chinese authorities. He has received no official communication from His Lordship authorizing him to resume them —while any hostile action against the Chinese people or territory can only be justified by the gravest necessity.

The Government of the Colony, and the needful measures for its security, are no doubt committed to its Supreme Authority, and Sir John Bowring has, without delay, summoned the members of the Executive Council, and invited the presence of the Senior Officers of the Naval and Military services, to discuss what steps should be taken in the present exigency.

A Proclamation has been prepared and will be immediately issued in Chinese and English, of which I have the honour to forward a copy.

The Senior Naval Officer has engaged to send the Chinese translations to Heangshan and Sun-on, and His Excellency will take care that it is also forwarded to the Allied Commandants in Canton, for communication to the Imperial Commissioner Hwang, and to such other persons as they may deem necessary. Meanwhile Sir John Bowring ventures to hope for the early arrival of Her Majesty's Ambassador and the Naval Commander-in-Chief, not doubting that they will relieve him from his grave responsibilities by the adoption of prompt and energetic action against the reckless disturbers of the public peace.

As regards local arrangements, instructions have been given to the Police to exercise the utmost watchfulness. The time at which Chinamen without passes are allowed to be in the streets has been limited to 8 o'clock p.m.; and Military Patrols have for several nights paraded the populous parts of the city, and will continue to do so.

The attention of the Police is especially called to the necessity of watching those unoccupied houses which might prove lurking-places to evil-doers; and His Excellency ventures confidently to hope that, with the friendly co-operation of Her Majesty's subjects, and the adoption on their part of such precautions as are demanded by prudence and foresight, our present disquiets and difficulties will be succeeded by the establishment of the public peace, and the extension of the public prosperity.—I have, etc,

(Signed) W. T. Bridges,
*Acting Colonial Secretary.*

Proclamation announcing Treaty of Peace between England and China and requiring obedience to law and good behaviour on the part of the Chinese inhabitants.

A copy of the proclamation mentioned in the foregoing letter, announcing the restoration of peace between England and China and requiring obedience to the law and good behaviour on the part of the Chinese inhabitants, is given hereunder, the same being published in *The Government Gazette* of the 31st July :—

PROCLAMATION.

John Bowring.

Peace has been happily established between the Queen of Great Britain and the Emperor of China. The solemn Treaty was signed at Tientsin on the 3rd July, by High Commissioners for that purpose appointed.

It is the duty of all good subjects reverently and obediently to give effect to the engagements entered into by their respective Sovereigns, and most especially so when those engagements proclaim amity, harmony, and good-

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In this Colony great numbers of Chinese are settled. They have taken no part in any hostilities, but have pursued their avocations in peace and due submission to the laws; many of them have been engaged in the service of Her Majesty's subjects, have contracted engagements with them, and are entitled to the protection and friendship of the British authorities.

But, in disregard of the obligations of Treaties, and of the Will of His Imperial Majesty, menacing Proclamations and Orders have been issued, compelling the peaceful residents of this Colony to quit their abodes,—to violate their obligations,—to neglect their duties,—and to flee to the mainland of China; and these menaces have proceeded principally from the districts of Heang-shan and Sun-on.

Now, be it known to those who have issued, or who shall seek to give effect to such menaces, and especially to the authorities and gentry of Heang-shan and Sun-on, that these acts of hostility cannot be tolerated by me; and that, unless the Proclamations and Orders, compelling the Chinese people to leave this Colony, be immediately withdrawn, and the people who have left the Colony allowed without delay to return to their business, and to the service of those with whom they have been engaged, the places and persons to which these hostile acts are traceable will render themselves liable to signal punishment.

Moreover, attempts have been made to stop the supply of provisions to this Colony; and it is hereby proclaimed, that every person who shall arrest the safe and regular transport of articles intended for the markets of Hongkong, does, by such act, declare himself an enemy of Great Britain, and a lawless subject of the Emperor of China, and will be severely visited for his offence.

Let, therefore, the disturbers of the public peace take warning,—and the well-disposed rely on the protection which this Government is willing and able to afford.

Given at Victoria, Hongkong, this 30th day of July, 1858.

By His Excellency's command,

W. T. Bridges,
*Acting Colonial Secretary.*

God Save The Queen.

# CHAPTER XXIII.

## 1858.

Neglect of the authorities to inquire into charges brought by the Attorney-General against Mr. Caldwell.—Sharp debate in Legislative Council affecting the Registrar-General's character.—Mr. Anstey's resignation as a Justice of the Peace, on account of his declining to sit with Mr. Caldwell.—Mr. Anstey's reasons.—Mr. Anstey addresses the Secretary of State upon the subject. The Governor declines to accept Mr. Anstey's resignation as J. P., and asks him to reduce his charges to writing.—Mr. Anstey's reply.—Sir John Bowring asks the Justices to inquire.—The Justices refuse to interfere.—A Committee appointed.—Mutual recriminations.—Sir John Bowring asks Secretary of State to await result of investigation on Mr. Anstey's *ex parte* statements.—Alludes to Mr. Anstey's 'restless nature.'—The Commission issued.—The Warrant of Commission.—The list of charges against Mr. Caldwell.—The inquiry public.—Disgraceful scene between Mr. Anstey and Dr. Bridges.—Dr. Bridges' attack upon Mr. Anstey.—Mr. Anstey's revelations regarding relationship between Sir John Bowring and Dr. Bridges.—Sir John Bowring refers in the Legislative Council to his privileged communications with Mr. Anstey.—The report of the Commission.—Some of the facts proved.—Mr. Caldwell's appointment as a J. P. deemed injudicious.—Dr. Bridges' acuteness consequent upon Mr. Anstey's relations with the Government.—Mr. Mercer obtaining an extension of leave, Dr. Bridges wishes 'to resume the practice of his profession.'—The Governor's reply.—Sir John Bowring informs the Secretary of State Mr. Mercer's prolonged absence causes him much perplexity.—The Secretary of State's acknowledgment of Dr. Bridges' services.—No expression of regret at resignation.—Report of the Commission forwarded to Mr. Anstey.—Mr. Anstey informed unless his defence is satisfactory, he will be suspended.—Mr. Anstey protests against the charges against Mr. Caldwell being called *his* charges, and asks for a copy of the evidence.—The report of the Commissioners attacked by the Press.—Mr. Anstey's answer.—Mr. Anstey informed that Executive Council would consider advisability of suspending him.—Mr. Anstey forwards further memoranda to Dr. Bridges, asking for a fair trial.—The Executive Council decide to suspend Mr. Anstey.—Mr. Anstey's suspension anticipated.—Applications for the vacancy had already reached the Government.—Mr. Anstey suspended from office and removed from the Commission of the Peace. Mr. Day appointed acting Attorney-General.—Mr. Anstey memorializes the Secretary of State.—His attack upon Colonel Caine.—The Secretary of State informed of Mr. Anstey's suspension and of Mr. Day's appointment as acting Attorney-General. Sir John Bowring also recommends Dr. Bridges for the Attorney-Generalship.—Sir John Bowring's despatch reporting the suspension of Mr. Anstey.—"Insubordination to his authority and disrespect to his station and years."—The Bishop of Victoria takes a charitable view of Sir John Bowring.—Sir John Bowring as belonging "to an unsatisfactory political and religious school."



Neglect of the authorities to inquire into charges brought by the Attorney-General against Mr. Caldwell.

THE Attorney-General had several months ago brought some very serious charges against Mr. Caldwell, the Registrar-General, which the local Government neglected to investigate.

Sharp debate in Legislative Council affecting the Registrar-General's character.

On the 10th May there was a sharp debate in the Legislative Council, in which the charges were brought up as affecting the Registrar-General's character.

Mr. Anstey's

On the 13th the Attorney-General forwarded his resignation to the Governor as a Justice of the Peace, as he declined to sit on the same Bench with a person against whom these charges had been made, but whose word of denial was considered suffi-

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his reasons not so much upon the antecedents of Mr. Caldwell's life passed among Chinese outlaws and pirates, nor upon his alliance by means of his wife,—a Chinese girl from a brothel,—with some of the worst Chinese in the Colony," but on the fact that he considered him unworthy of the position he held owing to his long connexion with the notorious pirate and informer Ma Chow Wong,* and "as a speculator in brothels and brothel licences."

as a Justice of the Peace declining to sit with Mr. Caldwell.

Mr. Anstey's reasons.

Mr. Anstey at the same time addressed the Secretary of State upon the subject, supplying the Governor at the same time with a copy of his letter. On the 14th May, the Attorney-General's letter was answered. In this answer the Governor declined to accept Mr. Anstey's resignation, and called upon him to reduce his charges into writing.

Mr. Anstey addresses the Secretary of State upon the subject.

The Governor declines to accept Mr. Anstey's resignation as J. P., and asks him to reduce his charges to writing.

A reply was sent stating that he, Mr. Anstey, refused to act as a Justice of the Peace; that, as for giving the charges in writing, he had done so more than once when they had been passed in silence; and that he should therefore decline allowing any more of his written charges to run the same chance of neglect.

Mr. Anstey's reply.

Sir John Bowring thereupon summoned together the Justices, to inquire into the charges, as affecting the character of the Bench; but, on the motion being put to them at the meeting, the Magistrates by a majority determined not to interfere in the matter, considering that the investigation lay entirely with the Government. Nothing was left but for the Council to appoint a Committee to inquire into the charges. The mutual recriminations in which the heads of departments were indulging at this period were scandalous in the extreme, disgraceful to the service, and detrimental to the Colony.

Sir John Bowring asks the Justices to inquire.

The Justices refuse to interfere.

A Committee appointed.

Mutual recriminations.

Sir John Bowring, in alluding to the letter addressed directly to Lord Stanley by Mr. Anstey, asked His Lordship, on the 18th May, "to wait the result of the investigation before coming to a decision on Mr. Anstey's *ex parte* statements," and he added "I cannot, however, refrain from mentioning that since Mr. Anstey's arrival in the Colony (with the exception of the periods of his absence therefrom) there has been little peace. Mr. Anstey's restless nature has caused infinite annoyance to the Government, and the cases referred Home (though sufficiently characteristic) are but a few of those with which I have had the disagreeable duty to deal."

Sir John Bowring asks Secretary of State to await result of investigation on Mr. Anstey's *ex parte* statements.

Alludes to Mr. Anstey's 'restless nature.'

On the 20th May the Government issued a Commission consisting of Mr. Cleverly, the Surveyor-General, Mr. Davies, Chief

The Commission issued.

Magistrate, and Messrs. Lyall, Fletcher, and Scarth, Justices of the Peace, to inquire into the charges made by the Attorney-General against the Registrar-General.



The following is a copy of the Commission, together with a list of the charges preferred against Mr. Caldwell drawn up by the Government, but in regard to which Mr. Anstey positively declined any responsibility and emphatically demurred, as will be seen hereafter, as to their being in any sense *his* charges:—

The Warrant of Commission.

## WARRANT OF COMMISSION.

Whereas certain charges have been brought in the Legislative Council and in official documents by the Honourable Thomas Chisholm Anstey, Esquire, Attorney-General, against Daniel Richard Caldwell, Esquire, Registrar-General, which necessitate an inquiry into the truth of such charges; and whereas such inquiry will be most conveniently and expeditiously prosecuted by means of a joint Commission of officers of the Government, and Justices of the Peace; now, therefore, know ye, that I, Sir John Bowring, Knight, LL.D., Governor and Commander-in-Chief of the Colony of Hongkong, and its Dependencies, and Vice-Admiral of the same, do hereby under my hand and the Seal of the said Colony, appoint you, the Honourable Charles St. George Cleverly, Esquire, Surveyor-General of the said Colony, the Honourable Henry Tudor Davies, Esquire, Chief Magistrate for the said Colony, the Honourable George Lyall, Esquire, Angus Fletcher, Esquire, and John Scarth, Esquire, Justices of the Peace for the said Colony; or any three of you, to be a Commission for instituting and prosecuting all needful and proper inquiries into the truth or otherwise of the under-written charges, which embrace the accusations made by the Attorney-General against the Registrar-General; and to take evidence, but not upon oath, in the premises; and to report to me all evidence so taken by you, and also your opinions thereon. And I do hereby require you to commence your said inquiries forthwith, and to proceed therein continuously, and to make your report to me as aforesaid with all reasonable despatch. And I do hereby empower you, during the course and for the purposes of your said Commission, to obtain at the expense of the Government such professional or other assistance as you may deem necessary, and to demand and obtain access, at all times, to all and all manner of papers, records, and documents, relating to the subject matter of the said Commission, and in the custody or under the control of the several public departments, within this Colony, and from time to time to call before you and examine all persons superintending or employed in or under any of the said departments.

And I do hereby charge all persons in the Public Service to be aiding and assisting unto you herein.

Given under my hand and under the Seal of the Colony of Hongkong, at Victoria, in the said Colony, this twentieth day of May, A.D., one thousand eight hundred and fifty-eight.

(Signed) JOHN BOWRING.

The list of charges, as alleged to have been preferred by Mr. Anstey against Mr. Caldwell, was the following:—

The list of charges against Mr. Caldwell.

## LIST OF CHARGES

*Preferred by the Attorney-General to the Government against the Registrar-General.*

1.—With being unfit to be a Justice of the Peace.

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3.—With having passed a portion of his life among Chinese outlaws and pirates.

4.—With an alliance with some of the worst Chinese in this Colony through his wife—a Chinese girl from a brothel.

5.—With being a speculator in brothels and brothel licences.

6.—With being long and intimately connected with Ma Chow Wong; and that that connexion is still subsisting; and that the principal link in that connexion is the bond of affinity by adoption according to Chinese law.

7.—With being in the habit, on Ma Chow Wong's unsupported information, of arresting and discharging persons, and of confiscating or restoring property.

8.—That the Chinese dare not now complain of the connivances and procurements of Mr. Caldwell, the patron of the outlaw Ma Chow Wong.

9.—With having procured bail for Ma Chow Wong; such bail being a servant of his own (Mr. Caldwell's), who had been but a month before in prison for debt.

10.—With audaciously denying that the books and papers of the pirate's hong contain any evidence of Ma Chow Wong's guilt, with having deceived the Executive Council in the inquiry had relative to Ma Chow Wong, and with being convicted of falsehood by Mr. May.*

11.—With being partner with Ma Chow Wong in a lorcha, and that there were entries in Ma Chow Wong's books, and made by him, of moneys paid to Mr. Caldwell on account or out of the produce of plunder made at sea.*

12.—With harbouring Ma Chow Wong's wife after his conviction.

13.—With inducing the Attorney-General at the beginning of 1857, to order the release of a great number of men, who Mr. May knows to have been pirates, and who Mr. Caldwell ought to have known at the time were pirates.

14.—With buying land in the Colony since December last, when he became licenser of brothels.

15.—With having once owned three unlincensed Hongkong brothels at a time.

16.—With having a Chinese sister-in-law by blood or usage, who in 1856-'57 was keeping brothels.

17.—With receiving the monthly rack rentals of houses, and in particular of a brothel standing on 11 Crown lots, down to the present month of May.

18.—With having informed Mr. May, that he, Mr. Caldwell, was a member of a Secret Society.

19.—With having informed Mr. May, that although he would not himself take bribes, he would not object to his wife doing so.

The inquiry public.

Disgraceful scene between Mr. Anstey and Dr. Bridges.

Dr. Bridges' attack upon Mr. Anstey.

The Commission held its first sittings on Thursday, the 27th May, this and subsequent meetings being open to the public. At the meeting of the 1st July a disgraceful scene occurred between Mr. Anstey and Dr. Bridges, when both happened to be present. The charge of malpractices, having become extended, came to be applied to Dr. Bridges, during the period he fulfilled the duties of Attorney-General. Dr. Bridges was called upon to give his evidence, but, instead of doing so, he made an attack upon Mr. Anstey, not for the commission of any

malpractices, but for harassing and slandering him. Dr. Bridges upon this occasion threw the first stone, and used language that seemed meant to provoke blows. In vain the Chairman tried to stop him,—the attempt to do so was like adding oil to the flame. The result was as might have been anticipated. Mr. Anstey retorted most effectively, not confining himself to any differences between Dr. Bridges and himself, but proceeding with the business before the meeting by stating what the malpractices were with which the former was charged. Mr. Anstey made the most astounding revelations yet heard of regarding the relationship which had existed between the Governor and Dr. Bridges. This is what he said, taken *verbatim*:— 

Mr. Anstey's revelations regarding relationship between Sir John Bowring and Dr. Bridges.

"In the face of the menace which Dr. Bridges in the Governor's name has held out of some official inquiry to begin when this Commission has ended its own, I will state generally what the malpractices were which were imputed by the Governor to Dr. Bridges, and which, or some of which, I restated to Mr. Mercer at the time. The Governor said he was never able to obtain an unbiassed opinion from Dr. Bridges, by reason of his being mixed up with a great quantity of local business; that there was a strange and illicit connexion between him and the Chinese community; that he used it to the great discredit of his office by every kind of extortion of an usurious character, he being an extensive money-lender amongst that people; that the house where he lived and had his office, and conducted the business of the acting Attorney-General was full of opium and other kinds of merchandise not belonging to himself, but deposited with him by their Chinese owners in pawn; that he obtained, and through his position, I understood, much higher interest than they could honestly pay; the maximum was so ridiculously incredible, except on the supposition of the goods being stolen goods, that I forbear to mention it; and he said that it was a scandal to the neighbourhood to see how the pawned goods came in and went out through the lower apartments of the house, as I understood. He further said, that the very moment of Dr. Bridges' departure from the Colony was the signal for all manner of complaints, impeaching Dr. Bridges's conduct in office and otherwise, and privately made to the Governor, of which the latter had never before had any notice. Finally, His Excellency said that he deeply regretted he had been weak enough to give some strong certificate in the shape of a letter of credentials, which Dr. Bridges had taken away with him;* but he said that he had been very careful to confine it to his ability as a lawyer; and that he had explained in the proper quarter that, by lawyer, he did not mean an international lawyer.† These were only some of the many things which I was very much pained to hear from him; but I remember well that so grave were his professions of distrust, that he went on to say, "He can do you no harm, for he shall never again hold office in this Colony;" he repeated that on several occasions afterwards. I remember Mr. Mercer telling me soon afterwards that the Governor had made him very angry one morning, by opening the question of Dr. Bridges to him, and to the effect that he, the Governor, was in the habit of hearing such awful disclosures about Dr. Bridges's misconduct and that he did not know what to think."

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* This must have been when Dr. Bridges hurriedly relinquished the acting Attorney-Generalship to proceed to England to urge his claims—see *antè* Chap. XVI. § II., p. 369.

† Probably this was in allusion to the *Arrow* incident which formed the subject of discussion in Parliament and in reference to which Dr. Bridges had been consulted when acting Attorney-General—see *antè* Chap. XVIII., p. 431. See also his opinion as to the Chinese being beyond the pale of civilized nations repudiated—*antè* Chap. XVI. § II., p. 377.

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Mr. Anstey continuing said :—

"I remember Mr. Mercer telling me that he took up the Governor roundly and said 'yes, I know that Dr. Bridges's enemies are trying to destroy him, now that his back is turned,* but every one of them will live to see his mistake,' or words to that effect. I think that occasion led to my mentioning to Mr. Mercer, in some way general or particular, the nature of the charges which I had heard against Dr. Bridges, and he assured me that they were false, adding these words which make me remember it—'We were at Oxford together, but I am not blinded by my friendship for him. I know his faults. He is no beauty, but he has not done those things.' On the other hand, I found a very strong impression in other quarters that the Governor's statements were not ill-founded, and twice during that spring I had to repel the advances of Chinamen offering me bribes, if I would assist their friends in prison."†

Sir John Bowring refers in the Legislative Council to his privileged communications with Mr. Anstey.

In what humour Sir John Bowring must have heard of these disclosures and Dr. Bridges received them, especially in his relations with the former, may be better imagined than described, but that Sir John Bowring substantially may have so confided in Mr. Anstey there could be but very little doubt. Yet subsequently he allowed himself to be influenced in selecting this very man of whom he held such an opinion to be acting Colonial Secretary! As will be seen hereafter, on the 2nd August before the Executive Council, and on the 4th October in the Legislative Council, Sir John Bowring referred to what he called his privileged but now 'distorted' communications with Mr. Anstey.‡

Some of the facts proved.

Mr. Caldwell's appointment as a J. P. deemed injudicious.

The report of the Commission.

The Commission having completed its labours drew up it report. It found that eight of the charges brought against Mr. Caldwell had no grounds for being brought or at all events that no proof of them had been brought forward; that seven of the charges were unproved, but that there were grounds for bringing them; and that four were proved, and it concluded by stating that though some facts had been proved, "it appeared to a majority of the Commission, that, although M. Caldwell's original appointment as a Justice of the Peace may have been injudicious, they (the facts proved in the Commission's opinion) did not necessitate so strong a measure as his removal from that office." The following is a copy of the report dated the 17th July :—

REPORT.

COUNCIL CHAMBER,
Saturday, 17th July, 1858.

Sir,—We, the Members of a Commission appointed by Your Excellency, on the 20th May, 1858, to inquire into and report upon certain charges against Mr. Caldwell, the Registrar-General, having inquired into the same do now report.—

That we commenced our public proceedings on the 27th May last, and have had twenty-five sittings, extending over a period of seven weeks; that we have examined upwards of fifty witnesses, and a vast mass of documents,

* Dr. Bridges was at this time in England seeking permanent advancement.

† An instance of this has already been referred to in this work—see *antè* Chap. XX. § I., p. 451.

‡ See Chap. XXIV., *infrà*.

and have extended our inquiries into a number of matters, some of which, irrelevant as they may now appear, were so woven into and combined with the immediate subject of inquiry, that it was not considered safe to leave them unexamined. We allowed ourselves great latitude as to the kind of evidence we admitted, and were obliged to do so particularly in the matter of hearsay evidence, though not to the extent which the Attorney-General (who sent a protest on the subject) considered justifiable or even necessary. We may observe here, that the same gentleman also forwarded a protest against the manner of taking Chinese evidence, as being in his opinion palpably favourable to Mr. Caldwell. But we now repeat, what the Chairman stated at the time of the reception of the protest, that we consider the Attorney-General's complaint totally unfounded.

We have experienced great difficulty in our labours: First, from the nature, arrangement, and wording of the charges; some of which it appeared unnecessary, as it certainly was most distasteful to us, to inquire into; secondly, from the reluctance of witnesses to give evidence; and thirdly, and especially, from the refusal of the Attorney-General to act as accuser, or to recognize the charges as his charges. Under these circumstances, we considered it advisable to engage the services of Mr. Day to act as examiner, parties interested being informed that he would receive at his Chambers any information which it was intended to bring before the Commission.

On the subject of our inquiry we report:—

That charge 2 has been satisfactorily met and explained by Mr. Caldwell, though there existed strong *primâ facie* grounds for bringing it.

That charge 4 is not proved, but that there were grounds for bringing it.

That no proof whatever has been brought forward in support of charge 5.

That charge 14 is not proved as regards Mr. Caldwell himself, though it appears that Mrs. Caldwell has had transactions in land and houses for her sister since December last, when Mr. Caldwell became Licenser of Brothels; but that there is no evidence that Mr. Caldwell had any knowledge of such transactions.

That charge 15 has not been proved.

That no proof has been given in support of charge 16, but that there were grounds for bringing it.

That there is no proof whatever of charge 17, and that there were no sufficient grounds for bringing it.

That there were no grounds whatever for bringing charges 18 and 19.

That there were no grounds whatever for bringing charge 3.

That with regard to charge 6, a long and intimate connexion between Mr. Caldwell and Ma Chow Wong has been proved,* but that there is no proof of any connexion by affinity according to Chinese law or custom.

That with regard to charge 7, it is proved that Mr. Caldwell has been in the habit, on Ma Chow Wong's unsupported information, of arresting persons; but that there is no evidence as to his confiscating or restoring property.

That as regards charge 8, there is no evidence of any connivances or procurements of Mr. Caldwell; but that it is manifest that the Chinese are very averse to give evidence against him.

That as to charge 9, it has been proved, that Mr. Caldwell aided in the acceptance of Sze-kai, his former servant, as bail for Ma Chow Wong, and that Sze-kai had been imprisoned for debt, for a few days, a short time previously.

That we think it unnecessary to make any other observation regarding charge 10, than that there is no evidence of Mr. Caldwell having deceived the Executive Council.

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* See *antè* Chap. XIX., pp. 445-447.

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That with reference to charge 11, a partnership with Ma Chow Wong in a lorcha is proved, and in fact admitted by Mr. Caldwell; but that there is no evidence as to payments to Mr. Caldwell out of the produce of plunder made at sea.

That as to charge 12, there is no evidence whatever,

That of the fact stated in charge 13, of the release of the men upon Mr. Caldwell's representation as to their character, there is no doubt whatever; and that it appears incomprehensible how any person with Mr. Caldwell's knowledge of the Chinese language, and holding the appointment he did, could have been ignorant of the character of the boats in which the men were seized, and that one at least of these men was a notorious pirate, particularly as it is in evidence that Ma Chow Wong was connected with the boats.

That with regard to charge 1, it being only a matter of inference, we find in support of such inference, that a sum of money was offered by a Chinaman as a mark of gratitude to Mr. Caldwell for being instrumental in the release of a lorcha seized by pirates, in which the man's father was; but that this money was refused by Mr. Caldwell, and on such refusal that it was offered to Mrs. Caldwell as a present for the children. A majority, however, of the Commission do not feel satisfied that Mrs. Caldwell accepted this money. It has also been proved that a Chinese female named Shaplok, who has been in frequent communication with Mr. Caldwell (and is reported, but not proved, to be a sister by Chinese usage, of Mrs. Caldwell), received from the Foo F'ai pawnshop the sum of $400, because the sentence on a pawnbroker belonging to the said shop had been mitigated,* as was supposed, through her influence, and that she received a further sum of $50 for her personal trouble in the matter. Further, since the commencement of this inquiry, Mr. Caldwell has, solely upon the information conveyed in an anonymous letter, that certain property had been stolen, personally, and without the assistance of the Police, searched a room in the occupation of Assow, the Police Court Interpreter, whom Mr. Caldwell knew to be about to give evidence before the Commission. Mr. Caldwell, in the opinion of the Commission, acted in this matter injudiciously, to say the least of it.

Notwithstanding these facts, coupled with the circumstance of Mr. Caldwell's connexion with so notorious a character as Ma Chow Wong, it appears to a majority of the Commission that, although Mr. Caldwell's original appointment as a Justice of the Peace may have been injudicious, they do not necessitate so strong a measure as his removal from that office.

Finally, we would state, that in the course of the inquiry it has come to our knowledge, that previous to the appointment of the Commission, certain papers connected with Ma Chow Wong's trial, and which might have been of service to the Commission, have been destroyed; but it has been clearly proved that their destruction was ordered solely because they encumbered the Chinese Secretary's Office, while it appeared that they were then of no value, and could not be further required.—We have the honour to be, Your Excellency's most obedient humble servants,

CHAS. ST. GEO. CLEVERLY, *Chairman.*
H. TUDOR DAVIES.
GEORGE LYALL.
A. FLETCHER.
JOHN SCARTH.

*To His Excellency*

Sir JOHN BOWRING, KT. LL.D.,
*Governor of Hongkong.*
*&c., &c., &c.*

* See *antè* Chap. XX. § II., pp. 465-466.

Knowing probably what the consequences of Mr. Anstey's relations with the Government would end in, and evidently with an eye to the future, notwithstanding his own 'indiscretions' so prominently disclosed in the opium monopoly inquiry of May last,* Dr. Bridges, on learning that Mr. Mercer, the Colonial Secretary, had had an extension of leave, wished at once to give up the acting Colonial Secretaryship in order "to resume the exercise of his profession" *(sic)*.† In other words he wished to throw off the shackles of his official position, now made so much more burdensome and anomalous by his own doings, in order to prepare himself for that other opening when it presented itself, namely, the Attorney-Generalship.‡ Accordingly, on the 21st July, he wrote to Sir John Bowring and asked to be allowed to resign his appointment on the grounds stated above, the Governor asking him in reply to continue in office for a short time longer to give him the benefit of his aid "until matters pending before the Executive Council were concluded."

Dr. Bridges' acuteness consequent upon Mr. Anstey's relations with the Government.

Mr. Mercer obtaining an extension of leave, Dr. Bridges wishes 'to resume the practice of his profession.'

The Governor's reply.

Sir John Bowring on the same day communicated with Sir Edward Bulwer Lytton, the Secretary of State, telling him of Dr. Bridges' resignation and that Mr. Mercer's prolonged absence was causing him much perplexity. In acknowledging the receipt of his letter on the 7th October, Sir Edward Lytton asked Sir John Bowring to convey to Mr. Bridges "the acknowledgments of Her Majesty's Government for the very effective services which he had rendered to the community of Hongkong, and the energy and judgment which he had displayed in discharging the duties of the temporary office which he had accepted at a period of no ordinary difficulty." A very hollow form, it will be admitted, considering the circumstances of the resignation,—and that there was no indication of regret at such resignation on the trivial grounds advanced.

Sir John Bowring informs the Secretary of State Mr. Mercer's prolonged absence causes him much perplexity.

The Secretary of State's acknowledgment of Dr. Bridges' services.

No expression of regret at resignation.

On the 23rd July the Governor forwarded a copy of the report of the Caldwell Commission to Mr. Anstey for his consideration and explanations. Being of opinion that none of the charges against Mr. Caldwell had been substantially proved and considering his behaviour before the Commissioners and his utter disregard of the respect due to the higher authorities of the Colony, by which he had caused "much public scandal," Sir John Bowring warned Mr. Anstey that, unless his defence was satisfactory, he would consider the propriety of suspending him from the exercise of his functions as Attorney-General. That Mr. Anstey had brought this on by his own indiscretions, there can be no mistake. The correspondence being of interest,

Report of the Commission forwarded to Mr. Anstey.

Mr. Anstey informed unless his defence is satisfactory, he will be suspended.

* *Antè* Chap. XXI., p. 472.

† He already enjoyed the right of private practice.

‡ See his statement in the Executive Council on the suspension of Mr. Anstey on the 7th August, p. 514, *infrà*.

Chap. XXIII. 1858. even at this date, is here reproduced. The following was the letter addressed to Mr. Anstey, by direction of the Governor :—

Colonial Secretary's Office, Victoria,
Hongkong, 23rd July, 1858.

Sir,

His Excellency the Governor directs me to inform you that the report of the Commission into the charges made by you in the Legislative Council, and subsequently in writing, against the Registrar-General, with the accompanying documents and evidence, have been submitted to and carefully considered by him. His Excellency finds that none of these charges have been substantially proved ; that many of them are reported to have been brought on insufficient grounds ; that, as regards four at least, there were no grounds whatsoever for your accusations ; and he cannot but consider the decision of the Commissioners as to the accused retaining his position as a Justice of the Peace in any other light than as an exculpation of him. His Excellency regrets to perceive, after the many warnings which you have received, that you brought forward these charges with precipitancy, and endeavoured to support them before the Commission with intemperance, and an appearance of malignity and partiality ; and, moreover, that you were betrayed during the proceedings into introducing much vituperative and defamatory matter, in utter disregard of the respect due to the higher authorities of the Colony, causing thereby much public scandal, without in any way furthering the objects of the Commission or the promotion of the public good. The proper discharge of the functions of Crown Prosecutor and Law Adviser of the Crown necessitates the possession of qualities in which you have proved yourself to be entirely deficient, by your inability in this matter to distinguish between real guilt and the mere effusions of private malice or common report. His Excellency desires you to furnish him in writing with such explanation or defence of your conduct as you may deem advisable, ordering me at the same time to inform you, that should such written statement not be satisfactory to him, it will be his painful but imperative duty to submit to the Executive Council the propriety of his suspending you from the further exercise of your functions as Attorney-General.

A copy of the report of the Commission is herewith forwarded to you.

I have, etc.,

(Signed) W. T. Bridges,
*Acting Colonial Secretary.*

The Honourable the Attorney-General,
etc., etc., etc.

The temper discernible in this letter speaks for itself.

**Mr. Anstey protests against the charges against Mr. Caldwell being called *his* charges, and asks for a copy of the evidence.**

**The report of the Commissioners attacked by the Press.**

In reply, the next day, Mr. Anstey again protested against the charges regarding Mr. Caldwell being called *his* charges* (in the qualification of which, as has been seen, the Commission also were very cautious in their report) and asked for a copy of the evidence taken before the Commissioners. Meanwhile the report of the Commissioners was being virulently attacked by a portion of the local press, *The Friend of China* alleging that the principal charge

* On this subject see also his Minute of Protest of Privilege, Chap. XXIV., *ubi supra*.

against Mr. Caldwell had broken down through a "contempti- Chap. XXIII.
ble, damnable trick on the part of the Government"—meaning 1858.
undoubtedly that certain papers found in the possession of Ma Chow Wong, as well as a memorandum upon the subject drawn up by Mr. May, which implicated Mr. Caldwell,* had been purposely destroyed in order to screen the latter.† For this statement the editor, Mr. Tarrant, as hereinafter recorded, was charged with libel in November following.‡

Mr. Anstey's answer.

On the 30th July Mr. Anstey forwarded to the Government what he considered a satisfactory answer to the charges brought against him with reference to his proceedings in connexion with the Caldwell Commission of Inquiry. His explanations "not being satisfactory to the Governor," at a meeting of the Executive Council held on Monday, the 2nd August, it was resolved unanimously that Mr. Anstey be informed that on the 7th August, the Executive Council would take into consideration the advisability of suspending him from office, and that any observations which he might desire to make in writing would, on that day, be submitted to the Council. The following is an extract from the minutes of Council held on the 2nd August, a copy of which was also communicated to Mr. Anstey :—

Mr. Anstey informed that Executive Council would consider advisability of suspending him.

Extract from the minutes of the Executive Council of Hongkong, held on Monday, the 2nd August, 1858. Present: His Excellency the Governor; the Honourable the Lieutenant-Governor; His Excellency the Major-General Commanding the Troops; the Honourable the acting Colonial Secretary.

His Excellency the Governor read to the Council the following observations in reference to himself, as growing out of the report of the Caldwell Commission :—

"I cannot follow Mr. Anstey through his violations of that honourable understanding which usually protects private and confidential conversations, and which, in the position in which the Attorney-General stands to the Governor, ought to have been specially sacred. He has brought before the Commission conversations which took place more than two years ago; and I can only aver, as far as my memory may be weighed against Mr. Anstey's veracity, that his statements, especially as to what passed respecting Dr. Bridges, are gross perversions, distortions, and exaggerations of my language. Indeed, my experience of Mr. Anstey's infirmities compelled me to protect myself against the very results which are now in evidence; for at the end of 1856 I advised one, and at the beginning of 1857 another, of Her Majesty's Secretaries of State that I had found it necessary to confine communications with the Attorney-General to written documents through the official channels, and to avoid as far as possible personal intercourse on public matters.

"I have to call the attention of the Council to a part of Mr. Anstey's evidence.§ "It (correspondence with Mr. D'Almada) states that the Governor differs from Mr. Anstey in his reading of a case which he had cited to support his opinion, and proposed sending a case Home to the law officers of the Crown. This was done, and by return a despatch was received from the Secretary of State for the Colonies, which said that the 'law officers' concurred with my

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* See these papers referred to *antè* Chap. XIX., p. 446.
† See charge 11, *antè* p. 504, and the report of the Committee on same, *antè* 508.
‡ See Chap. XXV., *infrà*, for details and result of the trial.
§ Evidence before the Caldwell Commission— *Parliamentary Papers*, 1860, p. 162.

Chap. XXIII. 1858.

reading.' It is true that such a reference was made as to the obligation of the Governor to attend a subpœna of the Supreme Court and all the correspondence forwarded to the Secretary of State on the 8th September, 1856, but so far from an answer being sent by return, no answer whatever was received; and on the 6th October, 1857, another despatch was written to the Secretary of State, at the instance of the Chief Justice, desiring for his guidance that the question might be decided; and on the 10th March, 1858, Lord Stanley sends the opinion of the law officers, which states, that in the question whether the Governor should attend a subpœna of the Court, they incline to think that the subpœna could not be enforced; but in a case where an 'action was brought against the law officer for acts done in the discharge of his duty, he had a right to expect every assistance from the Governor, both in the way of testimony or otherwise.'

"But Mr. Anstey adds: 'The despatch administered a severe reprimand to the Governor, blaming him for a want of generosity and justice.'

There is not a word of 'reprimand' or 'blame' in the despatch from the Secretary of State; and in the case referred to, which was a case of slander against Mr. Anstey, brought by Mr. Mitchell, I officially requested Mr. Mitchell to desist from bringing the action;* he refused, and he was nonsuited. I would add, that I did not refuse to obey a subpœna, but doubted whether I ought to attend in a matter which appeared to me a personal quarrel between the parties, and in which, in my judgment, both had been in the wrong, as was proved by the results."

Resolved unanimously (the acting Colonial Secretary declining to vote)—

1. That since Mr. Anstey's arrival in the Colony he has been engaged in a long succession of officialised quarrels and contentions with public functionaries. That these misunderstandings have been characterized by unwarrantably violent and vituperative language on the part of Mr. Anstey, have been detrimental to the character of Her Majesty's Government, and have caused much public scandal; and that Mr. Anstey's conduct in reference to these unseemly controversies has been frequently censured by the Governor, and severely animadverted on by Her Majesty's Secretaries of State.

Resolved unanimously (the acting Colonial Secretary declining to vote)—

2. That, on a former occasion, when the Governor was instructed to suspend Mr. Anstey, unless he made public reparation to the injured party, Her Majesty's Government declared, in an appeal made by Mr. Anstey to the Secretary of State, that "Mr. Anstey had availed himself of that appeal, not by expressing his willingness to make the apology which the evidence brought forward on behalf of the Chief Justice seemed to render proper, nor even by simply declining to give that apology, but by a letter, in which he repeats the charge in, what I must term, virulent and offensive language, calculated, in as far as in him lay, to degrade and vilify his superior functionary. And Mr. Anstey himself repudiates the excuse that he had only used ordinary freedom in remarking on the judge's demeanour on some convivial occasion, by declaring that the occasion was public—one of high official ceremony. Mr. Anstey stands, therefore, in the position of an officer who has made a charge of serious official misconduct against another, superior in position to himself, and refuses to retract or to apologize, although his charge is rebutted by strong evidence, and supported, as far as the papers before me show, by none."

On that occasion Mr. Anstey made public reparation, and was in consequence not suspended from office.†

Resolved unanimously (the acting Colonial Secretary declining to vote)—

3. That repeated warnings have had no effect in checking the impetuosity, tempering the rashness, diminishing the acrimony, or lessening the frequency

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* On this subject, see *antè* Chap. XVI. § II., p. 391. and also Chap. XVII. § I., p. 405.

† See *antè* Chap. XVI. § II., p. 387.

of Mr. Anstey's attacks; and that this Council concur in the opinion conveyed to Mr. Anstey in the letter of the acting Colonial Secretary of 23rd July, No. 433, in reference to the inquiry into charges made by him against Mr. Caldwell before the Commission appointed by the Governor. And the Council have come to the conclusion that Mr. Anstey's former errors have been repeated on this occasion.

Resolved unanimously (the acting Colonial Secretary declining to vote)—

4. That in discharge of his official functions the advice given by Mr. Anstey to the Governor in his official capacity has been frequently injudicious and intemperate; and that the suggestions of Mr. Anstey have been on several occasions repudiated by Her Majesty's Government.

Resolved unanimously (the acting Colonial Secretary declining to vote)—

5. That the explanations given by Mr. Anstey in his letter, dated 30th July, not being satisfactory to the Governor, that a copy of these resolutions and of the minutes of this meeting be communicated to him, and that he be advised, this Council will, on the 7th instant, at 10 a.m., proceed to the consideration of his suspension, and that he be advised, that any observations he may desire to make in writing will on that day be submitted to the Council.

(True extract.)
(Signed) L. D'Almada e Castro,
*Clerk of Councils.*

Mr. Anstey forwards further memoranda to Dr. Bridges, asking for a fair trial.

On the 3rd and 6th August, Mr. Anstey forwarded further memoranda, couched in extremely improper terms, to the acting Colonial Secretary making insinuations in reference to the latter's connexion with the opium farm and asking for a "fair trial."

The Executive Council decide to suspend Mr. Anstey.

Mr. Anstey's suspension anticipated.

Applications for the vacancy had already reached the Government.

On the 7th August the Executive Council met in accordance with its previous resolution, and decided to suspend Mr. Anstey from the duties of his office As will be seen, Mr. Anstey's suspension was fully anticipated, for applications for the vacancy which would be caused by Mr. Anstey's forced retirement had already reached Government. Nor is this astonishing when one considers the speeches of Mr. Anstey before the Commission,—speeches so insulting in reference to the Governor, that the Government (quite apart from Mr. Anstey's individuality or the charges against him) could only have brought upon itself further contempt had it allowed Mr. Anstey, at least without reference Home,* to remain any longer in office in the Colony. The following is an extract from the minutes of the Executive Council relative to the matter, which is of the utmost interest; Mr. Anstey being suspended from office and his name removed from the Commission of the Peace, while Mr. Day, who had assisted the Commission in the Caldwell Inquiry, was appointed acting Attorney-General, in preference to Mr. Kingsmill, who, it will be remembered, had already acted in that capacity during Mr. Anstey's absence in India† :—

Mr. Anstey suspended from office and removed from the Commission of the Peace.

**Extract from the minutes of the Executive Council of Hongkong, held on Saturday, the 7th August, 1858.**

* See upon this point Mr. Chichester Fortescue's speech in the House of Commons on the cause of Mr. Anstey's dismissal—Vol. II, Chap. XXXVI.

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Present :—His Excellency the Governor ; the Honourable the Lieutenant-Governor ; the Major-General Commanding the Troops ; the Honourable the acting Colonial Secretary.

Resolved (the acting Colonial Secretary declining to vote)—

That this Council, taking into consideration the resolutions passed at its last meeting, and that His Excellency the Governor then stated the letter of the Attorney-General of the 30th July was not a satisfactory answer to the charges brought against him with reference to his proceedings connected with the Caldwell Commission of Inquiry, is of opinion, after patient and deliberate consideration, that such last-mentioned letter, and also the subsequent letter and memorandum of Mr. Anstey, of the 3rd and 6th August respectively, purporting to be in explanation or vindication of himself, evince so insubordinate and disrespectful a spirit as, taking all the circumstances into consideration, to necessitate his suspension from his office.

Resolved (the acting Colonial Secretary declining to vote)—

That the Honourable Thomas Chisholm Anstey, Esquire, be suspended from the exercise of his functions and the receipt of his salary as Attorney-General in this Colony, until Her Majesty's pleasure be known.

Read Mr. Anstey's application of the 13th May last, desiring to resign his office of Justice of the Peace.*

Resolved (the acting Colonial Secretary declining to vote)—

That Mr. Anstey's resignation be accepted, and his name be accordingly removed from the Commission of the Peace.

The acting Colonial Secretary put in the following minute :—

"It is, I conceive, necessary that I should minute the reasons which have induced me to take the very unusual step of declining to record my vote in any of the proceedings of this Council, relating to the suspension from office of Her Majesty's Attorney-General, Mr. Thomas Chisholm Anstey.

"I have been subjected to such a series of attacks, both private and official, from Mr. Anstey throughout his tenure of office, commencing during my absence in England before we had even met in the Colony,† and continued up to the present week, that I am unable to free my mind from a feeling of strong personal dislike towards him, and that feeling incapacitates me, in my own opinion, from sitting in judgment upon him.

"Being, moreover, the senior member of the Bar here, having for a long period discharged the duties of Attorney-General, and entertaining the desire to again hold that office should I be deemed fit for it, I decline to give any man the opportunity of saying that I co-operated in making a vacancy for myself ; and it is not sufficient that I should, as in this instance, decline, if offered to me, the office of acting Attorney-General. It has been impossible for me as acting Colonial Secretary to avoid being to some degree mixed up with these proceedings, but, by the permission of His Excellency the Governor, I am fortunately enabled to limit my action outside of the Executive Council.

(Signed) W. T. Bridges."

"Council Room, 7th August, 1858."

Consideration was given to applications from Mr. Kingsmill and Mr. Day, for the office of acting Attorney-General ; and after discussion, it was unanimously resolved, that Mr. Day be appointed acting Attorney-General of Hongkong, pending the pleasure of Her Majesty's Government.

(True extract.)

(Signed) L. D'Almada e Castro,
*Clerk of Councils.*

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* *Antè* p. 501.

† This no doubt refers to the subject of professional etiquette—see *antè* Chap. XVI. § II., p. 373.

On being made acquainted with his suspension, on the same day that the order was promulgated, the 7th August, Mr. Anstey at once memorialized the Secretary of State, Sir Edward Bulwer Lytton, upon what he termed "the violence of the measure." The following extract upon the subject is taken from Mr. Anstey's letter, and it will be seen that he goes far beyond the necessities of the case and takes the opportunity to vilify another high official, facts in regard to whom, whatever they were or may have been, had no immediate connexion with the matter under consideration and which could therefore only aggravate his own case. The following is the extract in question :—

Chap. XXIII. 1858. Mr. Anstey memorializes the Secretary of State.

"The violence of the measure will, I am convinced, be made apparent to you on perusing my 'memorandum' of yesterday, submitted to the Council this day, and my letter of Tuesday last, referred to in paragraph 1 of that document. They contain my solemn protest against the acts of the Executive Council in my regard, as done in flagrant breach of the Queen's Regulations touching the suspension of Her Majesty's Colonial Officers, and my reasons for declining to sanction them by any consent of mine. They show that I have been condemned in the dark, and without a hearing ; and that I have been deliberately sacrificed by the partiality and injustice of the three persons, who, under the Governor, constitute that Council, the Lieutenant-Governor, Colonel Caine, General Sir C. F. Van Straubenzee, and Dr. Bridges himself.

* * * *

"It is impossible for me to rest day or night, whilst I think of the principle involved, and the bad precedent established, in my case, before the acute people, in whose eyes (so Sir Henry Pottinger and Sir John Davis thought) the free and noble institutions of Hongkong would stand one day as a model whereby to work the regeneration of the Chinese empire itself.

"From the beginning of this Colony, those visions have proved shadows. It has, to use the not exaggerated language applied to the Colonial Government by a former Secretary of State, "*stunk in all men's nostrils ;*" * and the scent of the Chinese nostril is keen. The miserable policy pursued by the local authorities in 1847-1848, in the case of the Compradore of the present Lieutenant-Governor, and his exactions of bribes in the name of His Honour,† could not have impressed the Chinese community with a belief in the innocence of the aspersed officials, and certainly must have led them to suppose that to our reputation for official purity we are nearly as indifferent as themselves, and against the honest and fearless denouncers of corruption, infinitely more vindictive.

* * * * "

On the 9th August Sir John Bowring informed the Secretary of State of Mr. Anstey's suspension from the exercise of his functions, and "finding it impossible to conclude his long despatch explaining the necessity of this proceeding," in time for the outgoing mail, stated he would forward it by the next, and that Mr. Anstey's name had been removed from the list of Justices. In a second despatch of the same date Sir John Bowring informed the Secretary of State that Mr. Day, the

Mr. Day appointed acting Attorney-General.

* See the expression used—*antè* Chap. XVII. § I., p. 405.

† This, of course, refers to the old dispute between Mr. Tarrant and Colonel Caine—see *antè* Chap. VII., pp. 143. 150. and Chap. VIII. § 1., p. 170, and subsequent references.

Chap. XXIII. 1858. senior barrister in the Colony, had been appointed acting Attorney-General and at the same time recommended,—should the decision of the Governor-in-Council be confirmed as regards Mr. Anstey—that Dr. Bridges be given the Attorney-Generalship.

On the 13th October, the Secretary of State simply acknowledged receipt of the Governor's despatches without offering any remarks. The masterly despatch of Sir John Bowring relating to Mr. Anstey's suspension is here reproduced in full. Although unduly severe in several respects, not to say more, it relates in detail almost every particular connected with the career of Mr. Anstey, from the date of his arrival in Hongkong until the moment of his suspension, and cannot be looked upon otherwise than in the light of one of the most important documents that have ever emanated from a Governor of a Colony to Her Majesty's Principal Secretary of State for the Colonies:—

Government Offices, Victoria,
Hongkong, 9th August, 1858.

SIR,

The accompanying minutes of the Executive Council will inform you that I have been compelled, with the unanimous concurrence of such Council, to suspend Mr. Thomas Chisholm Anstey, Her Majesty's Attorney-General, from the discharge of all the functions appertaining to his office. Recent events have painfully confirmed the conclusion, which has been long ripening in my mind, that the continuance of that officer in this Colony is not compatible with the respect and authority which the Government is bound to maintain, or with the peace and tranquillity of the community.

2. In ordinary cases, the punishment of suspension from office is consequent upon some particular act which renders an officer unfit for the public service; but the present case has its special character.

3. Mr. Anstey's presence in the Colony has been associated with so continuous a series of unseemly proceedings, that I feel myself compelled to retrace a large portion of his course here before I can, in a satisfactory manner, put you in possession of the facts, which, in my opinion, render it impossible that he should continue in the public service, at any rate in this Colony, or as Attorney-General.

4. I postpone for the present the consideration of the charges brought by Mr. Anstey against the Registrar-General, which so fitly close this unhappy catalogue.

5. The whole of Mr. Anstey's career has been more or less marked by the same characteristics, viz., impetuosity of temper beyond all control, credulity in listening to vague accusations, recklessness in preferring charges, persistence in adhering to and repeating disproved averments, and persevering malignity towards every opponent who has had the misfortune to incur his displeasure; and these fatal defects have altogether nullified the benefits which the Colony might otherwise have derived from the great talents which Mr. Anstey undoubtedly possesses. No one can be more sensible than I am of his unparalleled activity, his intellectual resources, his readiness and acuteness, and his varied knowledge of history and laws; but when these great gifts are applied, as they have been, to fomenting discord in a small community, the mischief

6. Mr. Anstey entered upon the duties of his office in the last days of January, 1856, two years and six months ago.* Of that time he has been absent about six or seven months,† and only during such absence has the Colony enjoyed a respite from a succession of official disputes, in almost every one of which he has taken the most prominent part.



7. Mr. Anstey has quarrelled with the Chief Justice; he has quarrelled with the acting Colonial Secretary; he has quarrelled with the Colonial Treasurer; he has quarrelled with the (late) Chief Magistrate; he has quarrelled with the assistant Magistrate; he has quarrelled with the (late) Crown Solicitor;‡ he has quarrelled with the Bench of unofficial Justices of the Peace; he has quarrelled with the Superintendent of Police for the time being, and with the Judge's Clerk; and not satisfied with these official scandals, he has been from time to time mixed up in private brawls, some of them of a most disreputable description.

8. I have no intention to lay stress on Mr. Anstey's personal demeanour to myself, which has been frequently extremely offensive, further than to say that in colloquial intercourse he frequently appeared so utterly forgetful of our relative positions, that I found it safer and better to avoid as much as possible private conversations on public matters with him, and to communicate solely through the secretaries, colonial and diplomatic. The necessity for this determination I have reported to Her Majesty's Secretaries of State, both for the Foreign and Colonial Departments in December, 1856, and January, 1857.

9. I have had the disagreeable necessity forced upon me of forwarding to the Colonial Office the documents bearing upon the cases in which Mr. Anstey placed himself in antagonism to his superiors, the Chief Justice and the acting Colonial Secretary; those showing his failure in a prosecution brought on his own responsibility, without my sanction, against the acting Chief Magistrate for extortion;§ reporting how he had rendered the tenure of his office unbearable to the Crown Solicitor by his overbearing manner, and others exhibiting the unhappy position of Mr. Anstey with the Bench of Justices.‖ In none of these cases has Mr. Anstey's conduct been approved of by your predecessors, and in several instances grave warnings have been administered to him. Where I have been spared the duty of reference Home in cases of his local disputes, the same acrimony and intemperance have marked Mr. Anstey's conduct. Mr. Hillier, the Chief Magistrate, a most painstaking and praiseworthy officer, but not a lawyer by education, had discharged the duties of his office for more than ten years without a word of censure, but within two months of Mr. Anstey's arrival here, he made a most virulent attack upon the Chief Magistrate in open Court, because the depositions had been taken in a somewhat informal manner.¶ A lengthened controversy ensued, as Mr. Hillier naturally resented such a mode of correction; and although the difficulty was smoothed down without a reference Home, it embittered the remainder of Mr. Hillier's career here, and was one of the principal causes

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* *Antè* Chap. XVI. § II., p. 370.

† Except for two short trips to Canton, once on private practice (*antè* Chap. XVI. § II., p. 375), and once on a pleasure trip where he met with an unpleasant incident (Chap. XX. § II., p. 463), Mr. Anstey proceeded to Shanghai for a change (Chap. XVII. § I., p. 406), then to Macao and afterwards to India (Chap. XIX., p. 439).

‡ Beyond what has already been recorded in reference to Mr. Hickson, the author has not seen the records regarding the quarrel referred to. See *antè* Chap. XVII. § I., p. 411.

§ Chap. XVI. § II., p. 388.

‖ It is hard to see where blame is to be imputed to Mr. Anstey in this matter—see *antè* Chap. XVII. § I., p. 398.

¶ Chap. XVI. § II., p. 378.

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which led to his removal from the Colony.* His death shortly afterwards took place when appointed to be consul in Siam.* Because Mr. Bevan, the Judge's clerk, did not pay Mr. Anstey his salary in the coins he expected to receive, a charge of malpractices was at once officially brought which, if it meant anything, meant embezzlement, but upon investigation, everything was found to be perfectly correct, and without any grounds for a supposition to the contrary. Mr. Grand-Pré, the acting Superintendent of Police, was in no way subordinate to the Attorney-General; but in November, 1856, a long official complaint was lodged by the latter against the former, charging him with "gross breaches of duty," "impertinence," "gross and glaring proofs of collusion," "proofs of incapacity or corruption." Mr. Mercer, the Colonial Secretary, looked into the matter, but could discover no ground of complaint whatsoever against Mr. Grand-Pré.

10. Similar instances might be repeated *usque ad nauseam*, but from these specimens it will not be difficult to form an idea of the general intemperance of Mr. Anstey's proceedings, and I leave this branch of the case with this observation, that in no single instance within my knowledge has Mr. Anstey substantiated any grave charge that he has brought against his brother-officials.

11. But the evils arising from Mr. Anstey's intemperance of mind do not stop here; for I have been taught by experience to place hardly any reliance in the prudence of the advice which I have a right to expect from him as my legal resource in times of perplexity, difficulty, or danger. Had I been guided by the opinion of the Attorney-General on several important occasions, results would have followed seriously compromising the Government, which would have made it not the thoughtful guardian of the permanent interests of the community, but the instrument of passing passions, the promulgator of needless alarms, and which would have given to our legislation an arbitrary and capricious character, little necessitated by the demands and dangers of the moment, and certainly not justified in the progress and development of events.

12. I refer particularly to the views which Mr. Anstey took of the course to be pursued in the poisoning case. He appeared to me under the influence of the most unreasonable and extravagant apprehensions. He had determined in his own mind that Ahlum, the baker, was the chief poisoner, and that, whether by military law or an extraordinary violation of the ordinary forms of justice, by some or other instrumentality the man must be hanged.† He told me that if I did not hang him Lynch law would do so. In the same spirit, Mr. Anstey advised me that I ought, by a succession of prosecutions on the same evidence, to continue criminal proceedings against Ahlum until a conviction was secured. No doubt, in the then excited state of this community, a verdict of guilty might ultimately have been obtained, and, as far as Mr. Anstey was concerned, Ahlum would have been delivered over to the executioner. I doubted whether Mr. Anstey's advice was sound, though, after consulting the Chief Justice, I detained Ahlum until I could obtain instructions from Home.‡ Mr. Anstey's opinion was not supported by the supreme authorities, and, under the order of the Secretary of State, Ahlum was released. Nothing whatever has occurred since his release to strengthen the evidence of his guilt; much, in my judgment, to establish his innocence.

13. From that time I have been compelled to feel that in Mr. Anstey, as Attorney-General, I have a very unsafe councillor in the day of special responsibility and peril.

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* This is hardly conceivable and was, to say the least, stretching the point beyond the necessities of the case for, as has been seen, Mr. Hillier received an enormous rise as Her Majesty's Consul at Siam and further to allude to his death there, which was due to natural causes, was to draw inferences as unfair as they were meant to be injurious to Mr. Anstey. See *antè* Chap. XVI. § II., pp. 383, 384.

† See his address to the jury—*antè* Chap. XVII. § II., p. 417.

‡ *Antè* Chap. XVII. § II., pp. 418, 421.

14. I subsequently refused to bring before the Legislative Council an Ordinance proposed by Mr. Anstey, as Attorney-General, making the poisoning of any British subject high treason, and to be dealt with as regicide attempts upon the person of the sovereign. I, however, referred it, under advice of the Chief Justice, to the Home authorities, who concurred in my opinion as to the unconstitutional character of the proposed measure.

15. In further support of the impossibility of my placing any confidence in Mr. Anstey's judgment, I now forward copies of the communications dated the 7th and 8th January, 1858, which I received from Mr. Anstey, *proprio motu*, pointing out the course which, in his judgment, I ought to pursue in the case of the Imperial Commissioner Yeh, then a prisoner of war in the hands of the Allied Powers. Advice of so extraordinary a nature did not appear to me worthy of serious notice, and it was passed by with a mere acknowledgment of the receipt of the communication. The very same day, Mr. Anstey announced to me, in Letter No. 2, that there was an intention to apply for a writ of *habeas corpus*, in order to obtain the release of Yeh. I took some trouble to ascertain whether there was any ground for supposing such an intention existed. I could find none; and on the following day Letter No. 3 was received. The magician had most successfully dispersed the shadow he had himself raised.

16. My despatch, No. 170, of 14th October, 1856, forwarded to Mr. Labouchere another proof of the rash and dangerous counsels which, in circumstances of moment, I have been liable to receive from Mr. Anstey. Had I, as he advised, at one stroke cancelled the Commission of the Peace, and thus, as far as the Governor of this Colony can, affixed a stigma to the names of some of the first mercantile firms in the world, I should have set the Colony in a flame.

17. But whatever had been the inconveniences arising from Mr. Anstey's conduct, or however little I felt I could rely upon him up to the month of May last, all his previous conduct has been cast into the shade, and every previous fault has been greatly magnified by his proceedings in connexion with a case which has kept this Colony in a state of excitement, and more or less paralyzed the action of every department of Government for the last three months. I allude to what I shall, for the sake of brevity, call the Caldwell case. It will be necessary for me to give you a complete narrative of it, and to send Home every document connected with it; and however much I may regret giving you so much trouble, I am bound to say that it is only from a careful survey of this mass of correspondence, that, coupled with what I have already stated, will appear the inevitable necessity of the suspension of Mr. Anstey, and the confirmation of such suspension by your paramount authority.

18. I am quite aware of the gravity of the responsibility I take upon myself in suspending Mr. Anstey from the exercise of his functions, and am prepared for those outpourings of vituperation and violence which better and far more exalted men than myself have experienced at Mr. Anstey's hands; but I confess the hesitation which the fear of being supposed to have made him the victim of private pique or personal vengeance is superseded by the conviction that I am but discharging a paramount and peremptory public duty.

19. I had become acquainted with the fact that Mr. Caldwell, the Registrar-General, and Mr. May, the Superintendent of Police, had not been working harmoniously together almost ever since the return of the former to Government employ in November, 1856.* Mr. Caldwell, being almost the only official in this Colony who possesses any adequate knowledge of the Chinese language, has been of very great benefit, not only to us, but also to the Queen's service generally in this part of the world, and I have had every reason to entertain a very high opinion of him. Particulars of some of his services accompany this despatch.

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* *Ante* Chap. XVII. § I. p. 408.

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20. Mr. Caldwell is, I believe, a man of mixed blood, born at Singapore;* he is married to a Chinese woman, converted to Christianity, by whom he has a large family, some of whom are now being educated in England. His pecuniary means are straitened as he has nothing but his salary, and part of that he has to set apart to meet debts which he incurred when out of Government employ in 1855 and 1856, during which period he entered into a commercial speculation in a coasting steamer, which turned out a failure. Mr. Caldwell left the service in 1855, at his own desire, because his salary—£400 per annum—was too small to support his family;† he was recalled at the commencement of the Canton troubles, because we really could not do without him, and his salary was raised to £700 per annum.

21. Mr. May, the Superintendent of Police, was a member of the London Police Force, who came out in 1844, to organise our police.‡ He has taken great pains with his education, and has very much raised himself above his original position. With one or two exceptions I have been generally satisfied with Mr. May's services until within a very recent period. One of those exceptions was his ownership of a very notorious nest of brothels very near the Police Station, and which he very unwillingly got rid of after considerable pressure from the Government.§ Mr. May's salary is £575 per annum, with quarters; but by speculations in land and buildings, or from other sources, he has, I am told, realized a large sum of money here, and is therefore in independent circumstances.

22. Mr. Bridges appeared to me, soon after he became acting Colonial Secretary, to entertain an unfavourable opinion, in which I did not fully concur, of Mr. May's mode of managing the Police Force, and to place much more confidence in Mr. Caldwell than in Mr. May. This may be attributable to the special attention which Mr. Bridges paid to the working of the Police, or from some other cause; but at any rate the fact undoubtedly existed, and I had more than once, on Mr. Bridges' representations, to reprimand Mr. May for neglect of, or disobedience to, the directions of the acting Colonial Secretary; whereas no complaint was ever laid by Mr. Bridges against Mr. Caldwell.

23. I scarcely need repeat what my despatches have given but too much evidence of, that Mr. Anstey has put himself in antagonism habitually to Mr. Bridges, as acting Colonial Secretary; he pursued the same course with regard to the questions which have arisen between the Registrar-General and the Superintendent of Police, throwing, in a spirit of passionate partisanship, all the weight of his personal, political, and official influence into Mr. May's scale, defending him when he has been obviously wrong, and persecuting Mr. Caldwell when he has been as manifestly right.

24. This feeling at length vented itself with full force at a meeting of the Legislative Council, held to consider the Registration Ordinance on the 10th May. Mr. Caldwell being Registrar-General, this Ordinance was a fitting opportunity for pouring the vials of Mr. Anstey's wrath upon him. Just before the sitting of the Council, Mr. May wrote a note to Mr. Anstey, informing him that Mr. Caldwell (who was, under the Venereal Disease Ordinance, No. 12 of 1857, the official upon whom devolved the duty of granting licences to brothels in certain localities) was himself the owner of a licensed brothel.

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* He was born in the Island of St. Helena, according to a pamphlet produced by him at the time in vindication of his character, and to which the author has had access. See his earlier career set out.—*antè* Chap. III. § II., p. 82 *note*.

† See *antè* Chap. XVI. § I., p. 361.

‡ He arrived in Hongkong on the 28th February, 1845—see *antè* Chap. III. § II., p. 75.

§ This personal attack upon Mr. May is referred to, *antè* Chap. XVII. § II., p. 422.

25. Mr. Anstey thereupon proposed the insertion of what is now section 27 of the Registration Ordinance No. 8 of 1858 ;* and made an attack upon Mr. Caldwell's general character. The acting Colonial Secretary stated that, from his own knowledge of Mr. Caldwell's private affairs, it was impossible that Mr. Caldwell could be the owner of the brothel in question, No. 48, because Mr. Caldwell owned no property of any description whatsoever in the Colony. The Surveyor-General suggested a reference to the Crown books for the purpose of seeing in whose name the lot upon which brothel 48 stood, was registered. Mr. Caldwell's name appeared as the registered owner. The acting Colonial Secretary reiterated his assertion that Mr. Caldwell had several months before parted with all the property he had in the Colony for the benefit of his creditors. I stated that I would cause an inquiry to be instituted into the whole matter, and the clause in question was adopted by the Council. I immediately directed the acting Colonial Secretary to obtain from Mr. Caldwell, in writing, a statement with regard to this brothel, and to his property in general. I annex Mr. Caldwell's answer. This and the result of other inquiries reported to me by Mr. Bridges, satisfied me that the charge made by the Attorney-General was founded in error, and I proposed stating as much to the Council at its next meeting, which was to be held after an interval of only four days.

26. But late on the 13th Mr. Anstey sent in a most intemperate letter, asking leave to resign his office of Justice of the Peace,† and requesting that his grounds for so doing might be submitted to the Secretary of State ; this letter was full of accusations of the gravest description against Mr. Caldwell. The original charge of brothel-holding now had added to it criminal complicity with Wong Akee *alias* Ma Chow Wong, a Government informer of long standing, whose conviction upon a charge of helping pirates had in the previous year occupied the Executive Council a considerable period,‡ and whose case, for the sake of brevity, accompanies this letter in a separate document. I must refer you, Sir, to this letter itself, in order that you may appreciate its gravity when proceeding from the Law Adviser to the Government.

27. I still did not abandon the hope that Mr. Anstey, on hearing read Mr. Caldwell's explanatory letter, and the result of the inquiries made into the original charge, might be induced to reconsider the position in which he had placed himself ; and the following day I read to the Legislative Council what I then considered, and what has, after a most lengthened investigation, since been proved to be, the satisfactory answer of Mr. Caldwell, that he had no connexion with, or property in, any brothel.

28. Mr. Anstey, however, added fresh fuel to his fire, and a scene ensued which, I believe, has seldom been paralleled in any assemblage of Englishmen met in official conclave, whether we consider the insubordination and intemperance exhibited towards myself or the malignity and scurrility of Mr. Anstey's renewed attack upon an absent man, the Registrar-General. From a manuscript note made by myself immediately after the meeting, and a copy of which is appended hereto, you will observe that the character of Mr. Caldwell's wife is now dragged into the net of calumny, and that there is no occupation too criminal on the sea, or too base on the land, in which Mr. Caldwell is not charged with being engaged.

29. Matters had now assumed a very serious aspect ; either Mr. Caldwell was unfit to remain, not only in Her Majesty's employ, but, indeed, anywhere

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* This section reads as follows :—"No person acting or employed by any other person acting in the execution of this Ordinance, and no member of the family of any such person, shall be possessed of or interested in any of the boats, vessels, conveyances, or ..... tenements to which this Ordinance relates, either in his or her own right or in the right of another, and either at Law or in Equity."

† *Antè* p. 501.

‡ *Antè* Chap. XIX., pp. 444-447.

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except in the common gaol of the Colony; or, on the other hand, Mr. Anstey had proved himself unfit for his own post. Immediately on leaving the Council, I showed to the acting Colonial Secretary the minute I had made of Mr. Anstey's oral charge, and he confirmed its general correctness. I gave him a memorandum, directing him to obtain from Mr. Anstey, in writing, a repetition of the accusations; the following day Mr. Anstey's tender of resignation as a Justice of the Peace was answered; the consideration of its acceptance was postponed, and he was informed that in consequence of what had passed the day before in Legislative Council, such of the charges against the Registrar-General as were tangible would be subject of inquiry, and the needful measures would be adopted by the Government.

30. Mr. Anstey acknowledged the receipt of this letter on the same day, and, therefore, Mr. Anstey was aware, at this early period, that the Government had proposed to institute that inquiry which had obviously become imperative. I must beg your particular attention, Sir, to this fact, as throwing much light upon the subsequent attempt of Mr. Anstey to relieve himself of the responsibility of having made such serious, not to say overwhelming, charges,* by pretending to remove his case to a superior tribunal—that of the Secretary of State for the Colonies.

31. As Mr. Anstey and Mr. Caldwell were both Justices of the Peace, and as Mr. Anstey declared the Bench to be contaminated by the continuance of Mr. Caldwell on it, and as the absence of the General at Canton restricted the numbers of the Executive Council to myself, the Lieutenant-Governor, and Dr. Bridges, I considered the preferable course for the proper investigation of the accusations against Mr. Caldwell, would be for me to request the Justices of the Peace to assist the Government, by taking upon themselves the inquiry into a matter so important to the character of their own body. I failed in obtaining the assistance I had hoped for,† and I append the answer from the body of Justices. The line of conduct pursued by Mr. Anstey at the meeting, will appear from the narrative which I have directed the acting Colonial Secretary to draw up, of all the facts connected with this case within his own knowledge. My application to the Bench of Magistrates was made on the 17th of May, and they had their meeting on the 19th. The 17th of May was a Monday; the mail for Europe did not leave until the following Sunday. Letters are seldom, if ever, posted here before the day anterior to the departure of the mail; it was then with extreme astonishment that I had laid before me, on the 17th, what purported to be the duplicate of a letter from the Attorney-General to the Secretary of State for the Colonies, already posted by Mr. Anstey.

32. This letter is, I doubt not, on its way back, in consequence of the informal mode in which Mr. Anstey thought proper to convey it. My despatch, No. 67, of the 18th of May, will put you in possession of my action in regard to it.

33. I now forward it to you; and as Mr. Anstey, in a subsequent letter, was pleased to dignify it with the appellation of an impeachment of the Government, I am perfectly willing that he should be kept to the charge and that it be dealt with accordingly.

34. Even if Mr. Anstey pretended to ignore the fact conveyed to him on the 14th, as to the institution of proceedings by the Government, he had the same statement most explicitly conveyed to him on the 18th, five days before the departure of the mail, and when, had he wished it, the irregular letter to the Secretary of State, might have been by my orders, and his consent, taken out of the Post Office, and the false step thus committed by him retrieved; but Mr. Anstey could surely scarcely venture to suppose that an irregular

* *Antè* pp. 503, 510.
† *Antè* p. 502.

act by a subordinate officer, like himself, was at once to stay the hands of Government, and to prevent his being called upon to substantiate the charges he had so freely made.

35. I must, also, here deal with and dispose of another technical objection raised by Mr. Austey; he not only declined to commit to writing what he had said at the Legislative Council on the 14th of May, but pretended under cover of a Standing Order of Council, not then passed, although it had been read to the Council by me as one of those I proposed thereafter to enact, should I obtain the sanction of the Secretary of State. He pretended, I say, to claim the privilege of not being questioned out of Council for anything said therein. But the legal quibble which seeks to justify acts done on the 14th of May, by Standing Orders and Rules which were not approved in Council until the 12th of July, is as remarkable as the moral obliquity which can construe freedom of speech in a Legislative Assembly to mean impunity for language which designated a most respectable married woman as a "harlot," and her husband, the speaker's brother-official, as a brothel-keeper and pirate.

36. The Justices being thus unwilling to assist the Government and Mr. Austey declining to join in the issue as to what his charges really were against Mr. Caldwell, I met the difficulties thus thrown in my way, by appointing a Commission of investigation,* and laying before them such charges as had either been stated orally by Mr. Austey in Council, or could be gathered from his official correspondence; and, as far as possible, to prevent mistake, the Commission was furnished with every document connected with the matter, while I gave to the chairman the written memorandum which recorded my recollection of Mr. Austey's speech in Council on the 14th May.

37. The Commission was composed of two officials and three Justices of the Peace. Both the former and one of the latter (Mr. Lyall) were members of the Legislative Council, and had been auditors of Mr. Austey's language.

38. I then caused copies of the charges which had been prepared by the acting Colonial Secretary to be furnished to Mr. Austey and Mr. Caldwell. Mr. Austey adhered to his system of limited liability (letter of 24th May), denied the charges to be his, and clung to his theory of the matter being removed to another tribunal, that of the Secretary of State.

39. The Commission commenced its labours on the 27th May; it sat at intervals for twenty-four days, and generally for six or seven hours each day, and I received its report after its labours had terminated. During this long interval most of the departments of the Government were almost paralyzed by the absorption of their chiefs. The Attorney-General and the Superintendent of Police generally attended the Commission, so did the Registrar-General, for his defence; the Surveyor-General and Chief Magistrate as Commissioners. I avoided all interference with their proceedings.

40. Of the manner in which the Commission discharged their duties, I cannot report satisfactorily. They availed themselves of the permission given them to retain legal assistance, and one of their first acts was to decline the advice tendered by the barrister (Mr. Day) they had selected for their guidance. Not only did these gentlemen wander out of the specific charges laid before them for their report, but they suffered themselves to be made the medium through which Mr. Austey might, in the presence of the public, over and over again make the grossest attacks upon the Government generally, upon myself individually, and upon the acting Colonial Secretary, both officially and privately, without the slightest regard to the question of their relevancy to the points under reference to the Commission. A printed copy of the entire evidence accompanies this despatch, and although, Sir, I can hardly ask you to devote your fully occupied time to perusing it in its entirety,

* *Antè* p. 503.

Chap. XXIII. I must draw your attention to the following passages of Mr. Anstey's evi-
1858. dence :—

"The first was, that I knew it was perfectly hopeless sending in any report to the Executive Government, as Mr. Caldwell was always held up as quite necessary to the administration of the Colony."

"I have, therefore, a right to say that the charges now under investigation have been already disposed of by the Executive Council."

"I cannot understand how, after my repeated and solemn references to the danger of employing Mr. Caldwell in any matter of state or police, of which my official correspondence with the Executive Government, subsequently to the proceedings in Executive Council, furnish some of the instances, His Excellency, or any member of his Government, would venture upon the destruction of a single portion, much less the whole, of what I must pronounce to be the damning proofs of his guilt."

"Within two days after my arrival, His Excellency was pleased to lament to me the corrupt state of the Hongkong Government, and the utter want of support to himself in his endeavours to stem the tide of corruption. He said there was but one public officer whom he could trust, besides the three who were going away to England or Siam ; one of whom (Mr. Rienaeker) I have since ascertained to have been a kind of partner to Mr. Caldwell in his speculations, and that, as to the one trusty public officer who was remaining in the Colony (Mr. Mercer), he was well disposed but timid. The Governor begged me to make it my business to bring to light, and, if necessary, to punish the malpractices of which he complained, and I beg to specify in particular the malpractices of the Police, and of my own department of Attorney-General."

41. I must refer to Mr. Bridges' evidence, and Mr. Anstey's rejoinder, to give you an idea of the lengths to which he permitted himself, and was permitted to proceed.

42. It must be naturally presumed, from the first passage, that the Attorney-General had officially, or at any rate privately, either in writing or by mouth warned me, or the Colonial Secretary as my official channel of communication, against Mr. Caldwell, and that, finding his warnings neglected, he had at length out of a sense of public duty, been forced into bringing these charges in an irregular manner.

43. Such a presumption is, however, totally unfounded. Mr. Anstey has never done anything of the sort ; nor, great as have been Mr. Caldwell's services, has he been so necessary to the Government as to warrant any immunity for malpractices on his part.

44. On one occasion only do I find that any hints or suspicion of Mr. Caldwell's integrity or trustworthiness was conveyed to the Government by Mr. Anstey ; and this was his request that Mr. Caldwell might not be advised of that most extraordinary recommendation of Mr. Anstey's that Yeh should be cited as a murderer before the Supreme Court on his being brought within the jurisdiction of the Colony.

45. But Mr. Anstey's counsels, in connexion with the poisoning case, were throughout of so extravagant and wild a character, that I must confess I considered them as aberrations of an intellect, on that matter at least, somewhat deranged.

46. Equally surprising, as proceeding from a high legal functionary, is the assertion that the charges then under investigation had already been disposed of by the Executive Government. The Attorney-General knew better than any one else that although, of course, guided by the maxim of not

believing any man to be guilty until he was proved to be so, I declined rushing with himself to conclusions which must cover Mr. Caldwell with infamy) I had, nevertheless, from the first insisted upon a full and complete investigation, not by the Executive Government, but by third parties, reserving to myself the ultimate decision between the accuser and the accused. Fortunate, indeed, was it that I did so, for the very charge here confidently asserted by Mr. Anstey to be proved beyond dispute, although at first supported by *primâ facie* evidence, has been most satisfactorily met and disproved.

47. Of still more serious a character, whether as regards Mr. Anstey's reputation for veracity, or the worth of his opinion as a lawyer, is the paragraph I have noticed. You will find, Sir, that Mr. Anstey assigns to himself the position before this Commission, not of accuser, but of an officer of the Government bound to attend its sittings in consequence of the general directions appearing in the warrant appointing the Commission. In this particular instance I will assume that Mr. Anstey did appear in such capacity only, that is as Her Majesty's Attorney-General, whose duty it was, in a calm and dispassionate manner, to assist the Commission by his legal experience in elucidating the truth. I have already reported in how far Mr. Anstey was justified in saying that he had made repeated and solemn references to the danger of employing Mr. Caldwell in any matter of state or police, and I again repeat that such a statement is, to use the mildest term I can apply to it, the offspring of an hallucination.

48. But, utterly without foundation as such a position was, Mr. Anstey made use of it here to endeavour to induce the Commissioners to distort the law of presumptions in a manner which, even to me, who am not a lawyer, appears most extraordinary, and entirely opposed to every notion of justice.

49. The history of the papers in question is as follows: The books of the shop in which Ma Chow Wong, at the time of his apprehension, owned a share, were at first in the custody of the Police, and, while there, were examined by Mr. Acting Assistant Magistrate May, with the object of adducing further support to the charge of complicity with pirates under which Ma Chow Wong then lay. Mr. May, being entirely ignorant of the Chinese written or spoken language,* this examination was made through a native interpreter at the Magistracy, Tong Aku, a very clever fellow, but a man of more than suspected character.† Mr. May made memoranda of this examination and showed them to the Chief Magistrate and the acting Attorney-General, informing both of these officers that they did not throw any light upon the pending charge against Ma Chow Wong, nor did he then even insinuate that any connexion between Mr. Caldwell and the accused was thereby shown. Mr. May made no communication whatsoever to the Acting Colonial Secretary respecting this memoranda, nor informed the Executive Government that he was in any way in possession of documents which would assist them as to Ma Chow Wong's general character, still less impeaching the conduct of so important an officer of the Government as Mr. Caldwell. While the question of the review of Ma Chow Wong's sentence was pending‡ before the Executive Council, the '*China Mail*' newspaper published a statement, to the effect that evidence existed on the books of Ma Chow Wong, which showed his participation in so many villanies as to render him an unfit object for any mercy. I was much surprised at this assertion (having been kept in the dark by Mr. May), and ordered a thorough search to be made of these books by Mr. Caldwell, assisted by Mr. Mongan, the acting Chinese Secretary attached to the Superintendency of Trade, and his staff of Chinese teachers. The books were handed over by the Police to Mr. Mongan in the

* See *The Straits Guardian's* correspondent's letter, *antè* Chap. XX., p. 493.
† The records show his entire exculpation—see *antè* Chap. XIX., p. 445.
‡ See reference to this, *antè* Chap. XIX., p. 445.

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month of September, 1857, and, from that time until they were subsequently burnt, they remained altogether out of the custody of the Colonial Officers. They were never at any time in the custody of the acting Colonial Secretary or his department.* Mr. Mongan and Mr. Caldwell made a joint report to me as to the result of their examination, and it differed very materially from the statements published by the '*China Mail*.' Determined to arrive at the truth if I could, I requested Mr. Dixson, the then editor of that paper, to attend the next meeting of the Executive Council to substantiate his allegations. He did so; and, to my great astonishment and indignation, cited the Superintendent of Police as his informant. Mr. May did not repudiate the onus thus thrust upon him, and now for the first time, proceeded to inform me of the examination Tong Aku had made for him of the books. He confirmed two of Mr. Dixson's allegations, but negatived two.

50. Not a word was said by Mr. May as to Mr. Caldwell on this occasion, the whole gist of the matter regarding Ma Chow Wong, and him alone. As Ma Chow Wong's case was at this juncture still under consideration of the Executive Council, I thought it advisable to have the correctness of the two differing accounts of the books reported upon by a third party, and directed Mr. Wade, the Chinese Secretary to the Superintendency, to undertake this task, and the books were forwarded to him. A few days afterwards, however, further light being unexpectedly thrown upon Ma Chow Wong's connexion with pirates from an entirely different source, the Executive Council resolved not to interfere with the sentence passed upon him;† however insufficient the grounds upon which it originally rested, and here, in October, 1857, ceased, to all appearances, any value possessed by the books in question. Mr. Wade being attached to the Earl of Elgin during the proceedings against Canton,‡ never had any leisure even to open the documents forwarded to him, and, on his departure with the Force in March, 1858, they were returned to Mr. Mongan in the same state, as to seals and strings, as he despatched them. Mr. Mongan's chief Chinese teacher, finding these books an encumbrance to a not very large office, suggested to him either their removal, or, if they were not further wanted, their destruction; Mr. Mongan therefore came to me, and I sent him to the acting Colonial Secretary, to receive any instructions. He accordingly proceeded to the acting Colonial Secretary, and very few words appear to have passed between them, upon what could at that time have been considered by either of them the mode of dealing with a great mass of Chinese papers, which had lost all importance, and were destitute of even any interest, Ma Chow Wong being in Gaol, and no other party at this time mentioned in connexion with them. Mr. Mongan did not report to me the result of his conversation with the acting Colonial Secretary, but acted by his advice and burnt the books forthwith. I heard nothing further whatsoever from any one on the subject until after the Caldwell Commission had commenced its sittings, and then, to my surprise and regret, I learnt what had taken place. In thus expressing myself, I do not attribute blame either to Mr. Bridges or Mr. Mongan, for it was impossible that they or any one else could, in the month of March, have supposed that the Attorney-General would, in the following May, bring long dormant charges against the Registrar-General, and fasten upon the destruction of these books as a means for further extending his incriminations; but, if consulted, I should have desired all the documents to be restored to the custody of those who had the ordinary charge of

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* A perusal of the Parliamentary Papers on the subject of the Caldwell-Ma Chow Wong connexion throws a different complexion upon the whole of this sad and disgraceful matter. See the case against Mr. Tarrant, Chap. XXV., *infrà*., and also the report of the Executive Council in September, 1861, where the Council unanimously recommended Mr. Caldwell's dismissal as his "long and intimate connexion with the pirate Ma Chow Wong was of such a character as to render him unfit to be continued in the public service."—Vol. II., Chap. XXXV.

† Chap. XIX., p. 447.

‡ See *antè* Chap. XVIII., p. 435.

such documents. I have only to add to this long episode, that up to the time of their destruction in March, it was never hinted to me or the acting Colonial Secretary that Mr. Caldwell's name was in any way implicated with these books, and no one has ever even suggested that Mr. Caldwell was consulted about, or knew, that they had been burnt.

51. Upon this state of facts I leave you to form your own opinion as to the conduct of an Attorney-General, appearing only as a witness, who ventures to advise the Commission to apply against Mr. Caldwell the maxim, "*Omnia præsumuntur contra spoliatorem*," and most unjustifiably insinuates that these books (now inaccessible for condemnation or defence) contained damning proofs of Mr. Caldwell's guilt, there not being a tittle of evidence to support such a presumption, and then because other gentlemen, without Mr. Caldwell's knowledge, had put these books out of the reach of the Commission, that body, who naturally would respect the law laid down by the law adviser of the Crown, are to find, as proved against Mr. Caldwell, anything which the malice or ingenuity of his enemies can invent or suggest.

52. This portion of the case alone convinces me, and must, I think, be equally full of conviction to you, Sir, that Her Majesty's service cannot be honourably served by a law officer who can think and speak as Mr. Anstey has done in this instance.

53. But there remains still one more matter, personally affecting both myself and the acting Colonial Secretary, which far more than all the rest shows the vindictive and intemperate nature of Mr. Anstey, and the impossibility of his continuing to hold an office, which above all others demands close official confidence between the Governor and its incumbent. At the 15th day's sitting Mr. Anstey introduced a most irrelevant statement, to the effect that I had, shortly after his arrival, complained to him of the malpractices theretofore existing in the department of the Attorney-General.*

54. The object of this most unnecessary allusion could, of course, be but one, viz., to give fresh vent to that unceasing feeling of animosity which Mr. Anstey has so constantly exhibited to the previous occupant of his office, the present acting Colonial Secretary, Mr. Bridges.

55. It is true that some conversation did take place between myself and Mr. Anstey, as my confidential legal adviser, soon after his arrival, and in the freedom of such intercourse, no doubt, I afforded material upon which the most unwarrantable, not to say wicked, superstruction has been raised by Mr. Anstey.

56. My recollection of what took place more than two years ago amounts to this effect: I mentioned to Mr. Anstey that I had heard Mr. Bridges had been engaged in commercial transactions, lending money at a high rate of interest, and having securities deposited at his own house, and that it appeared to me such sources of profit were not compatible with his professional position. I may add, that I did not conceal this opinion from Mr. Mercer, the Colonial Secretary, who thought the Government had nothing to do with the manner in which Mr. Bridges invested his money, such investments never have been associated with any charges of dishonesty or fraud.

57. As regards Mr. Bridges's opinion as a lawyer, I certainly stated, as Mr. Anstey was entitled to know, that there had been cases in which those opinions had not been confirmed by the authorities at Home—cases in which he had differed from me, but without opprobrium to himself as my own per-

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* *Antè* p. 505.

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sonal experience, position on many occasions as commercial commissioner, and parliamentary status had given me advantages over a gentleman, whose practice before he came to the Colony had certainly not been great.

58. And I probably added, though I have a less distinct recollection of this, that I thought the private practice of the Attorney-General was not always compatible with his engagements to the Crown, that duties and interests sometimes clashed. This opinion I have frequently expressed;* it concerns Mr. Anstey as much as Mr. Bridges, for in cases where large fees have been paid to the Attorney-General by one of the litigant parties, I have felt myself precluded from consulting him, when such cases have been before me on final appeal.

59. But I could never have supposed that the confidence which usually exists between gentlemen in their private intercourse would be violated, and my words distorted, exaggerated, and tortured, in the manner of which Mr. Anstey has given so extraordinary an example.

60. Mr. Bridges spoke to me as to the charge thus brought against him by Mr. Anstey, but I declined to take official cognizance of anything said before the Commission by any witness, until all the proceedings were before me, but told Mr. Bridges that his appointment by me to his present office, ought to be a sufficient proof to him that I had never laid official malpractices to his charge. It would seem that Mr. Bridges considered this explanation sufficient in the first instance, but finding that the Commission had printed Mr. Anstey's statement and allowed it to be published, he demanded from them the opportunity of being heard in reply.

61. It would have been more prudent in my judgment, and more dignified, if Mr. Bridges had adhered to his original resolution, and have left me to justify or explain to Her Majesty's Government the true facts of the case, but he was entitled to be the judge in his own matter. His action was, however, entirely his own; I, in no way, participated in it, although Mr. Anstey abstained subsequently from asserting most falsely that I authorized and even co-operated in the step thus taken by Mr. Bridges.

62. Mr. Anstey's counter-statement, in reply, will be, Sir, I trust, carefully perused by you in its entirety, for it contains an amount of misrepresentation and acrimony, which will, I think, be with difficulty paralleled elsewhere.

63. I have above stated what the real nature of my communication to Mr. Anstey was, and you will be able to judge with what unblushing vehemence of mendacity he has added to and distorted it; but this, bad as it is, was not sufficient for Her Majesty's Attorney-General; '*vires acquirit eundo*,' and when his harangue terminated by a charge before unheard of, and never before or since attempted to be supported by one iota of evidence, against Mr. Bridges, of being convicted of seeking his own escape from public odium and contempt, in the destruction of public records, of which he was the custos, and which contained the damning evidence of his own complicity, or that of his subordinates with thieves, resetters, murderers, and pirates; from that moment it became self-evident that even calumny had with Mr. Anstey no limits, and that, in the intemperance of his passion, falsehood had no shame for him.

64. It would not be difficult for me to give further instances, in addition to these, but I refrain from doing so, for the task is both wearisome and repugnant to my feelings. I am, moreover, satisfied that unless you are already

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* *Antè* Chap. XXI., p. 476.

convinced of the impossibility of so unfit a man as Mr. Anstey has proved himself to be for the office of Attorney-General continuing a member of this Government, it would be impertinent in me to press the subject at greater length upon you.

65. The Caldwell Commission presented its report to me, dated July the 17th, on July the 19th, and I must refer you, Sir, to this document, which I believe is considered by all parties most unsatisfactory. I feel it necessary to examine some of the grounds upon which its conclusions rest, and which, in so far as they are unfavourable to Mr. Caldwell, are in my judgment unwarranted by the evidence. Mr. Day, the present acting Attorney-General, who was the barrister selected by the Commissioners themselves to assist them, has, at the request of the acting Colonial Secretary entered at some length into an examination of the report, which task, from his thorough acquaintance with the evidence, he was perhaps the most competent person to perform, at the request of the Lieutenant-Governor and the General. I transmit Mr. Day's letter herewith, and I think a careful perusal will show how nearly, in the opinion of an unprejudiced lawyer, the Commissioners have strained every point which could possibly be made to tell against Mr. Caldwell.

66. The decision on the first charge, as to whether Mr. Caldwell was or was not fit to continue a Justice of the Peace being decided in his favour, even by a tribunal which had been extreme to mark anything which he had done amiss, I could regard in no other light than a general acquittal even by it, and I have now therefore the honour to report to you my conviction that, with one exception, and that amounting to not more than an indiscretion (the search of "Assow"),* Mr. Caldwell has come blameless out of one of the most searching investigations to which man was ever subjected in an English community.

67. The necessity was now incumbent on me of calling the Attorney-General to account for that line of conduct which, suitably following up a series of official quarrels seldom, I believe, paralleled in any other locality, had kept the Colony in a flame for so many weeks, and during which his increasing spirit of insubordination, promised, if unchecked, to attain such a height as necessarily to bring the Government into contempt, and reduce what might be a tolerably well regulated community into a chaos of disorder.

68. The evidence having been submitted to me in manuscript on the 19th of July, I devoted myself to a careful perusal of it, and on the 23rd, directed the letter of that date, which is appended hereto, to be written to Mr. Anstey. In order that Mr. Anstey might at once see the gravity of the position in which he had placed himself, I caused to be intimated to him, in this preliminary letter, that unless he sent in a satisfactory reply, a reference would ensue to the Executive Council.† I did this under the idea that I was acting most fairly by him in so doing, and hardly expecting that an *ex favore* act of this description would be attempted by him to be twisted into an irregularity. I may also here mention that throughout its sittings the Commission printed *de die in diem*, but did not communicate them to me, the proceedings of each day, and that as Mr. Anstey attended every sitting of the Commission, with, as I am informed, at most five exceptions, and as each day he had handed to him the printed evidence for his perusal, and his own evidence occupies part or the whole of not less than eighteen pages, Mr. Anstey might well be expected to be tolerably informed as to the progress of the case.

69. On the same day Mr. Anstey returned the answer found in the appendix, and dated July 24. In this letter he assumes a Fabian policy, and reiterates his repudiation of any responsibility on account of the charges

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* See the Report of the Commission, *antè* p. 508.

† *Antè* p. 509.

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brought against the Registrar-General,* forgetting apparently for the time that he had denied my jurisdiction by an appeal to the Secretary of State, in the shape of an impeachment of this Government. He afterwards again resumes the position of being independent of my jurisdiction. There is, however, one point stated in this letter which is peculiarly worthy of your attention when you hereafter find Mr. Anstey complaining of the scant justice done by the Commission. Whether Mr. Anstey was prosecutor or witness, it certainly surprised me not a little to find that on the 24th, more than a week after the Commission closed its labours, Mr. Anstey was correcting his own evidence when in the printer's hands. Such a laxity of practice, on the part of the Commission, is almost inconceivable, for it opens a door to almost any correction, according to the greater or less scrupulosity of the corrector.

70. On the 28th July a complaint came in from Mr. Anstey against the Commission for not printing all the documents which he considered to be necessary appendiees to the evidence, which extended over 98 pages of double columns.

71. For this injury to his cause, even Mr. Anstey does not pretend to blame the Government. I gave the Commission *carte blanche* to print what they liked without any limit. These protests, coming from a party who denies being an accuser, but represents himself as merely a spectator, or an unwilling witness, speak for themselves.

72. Mr. Anstey answered the official letter of the 23rd on the 31st; his reply is dated the preceding day, Friday, but was not received until about 11 a.m. on Saturday. This document, consisting of about 34 closely-written pages, almost defies analysis or comment on my part from the vagueness of the manner in which it either eludes the topics which had been brought to his attention by the letter of July 23rd, or the bold form of contradiction behind which the writer retrenches himself where that style of defence better suits his purpose. This letter shows, in my opinion, in a still more aggravated form, the same errors which had in other cases disfigured Mr. Anstey's conduct; he will under no possible circumstances ever admit that he has been wrong, although it be clearly demonstrated to every one else that what he considers a fact is a creation or distortion of his own imagination; when charges that he has brought have been disproved, he reiterates them with increased acrimony; when the judges of his cause are on his side, they are everything which is upright and straightforward; when they presume to differ from him, they must be actuated by motives of an unworthy and hostile nature.

73. I have already gone over much of the ground retraced by Mr. Anstey in this letter; but I shall notice some points in it, leaving the whole of it for your consideration, as a further test of the meaning which this officer places upon the term subordination, as applied to himself and his superiors in office.

74. Mr. Anstey refers to a letter sent to the acting Colonial Secretary by the President of the Commission, after it had ceased to exist, and in which that officer somewhat unnecessarily takes upon himself to inform me that their report was simply intended to refer to the charges as they affect Mr. Caldwell, and that by it they did not intend to impute anything in the shape of misconduct to Mr. Anstey or Mr. May. This fact is self-evident, and it would have been a rather singular addition to other eccentricities of action, had the Commission constituted itself a judge of persons not on trial before

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* *Antè* p. 510.—They had been drawn up by Dr. Bridges by direction of Sir John Bowring, as *Mr. Anstey's* charges—see paragraph 38 of Sir John Bowring's despatch, *antè* p. 523.

them. It was for the Government, having that report, and the charges and the evidence before it, to say whether the public servant, who had created the necessity for this Commission, and whose conduct before it could only be judged by the Government, had or had not acted properly. Mr. Anstey, however, wishes to carry this letter still further, and construe it into an approval of his conduct. He is entitled to draw no such deduction.

75. Mr. Anstey, to further strengthen his position, addresses, without my sanction or knowledge, the unofficial Justices of the Peace, asks them for their opinion on a point upon which it is utterly impossible they should be in a position fairly to pronounce until they had carefully weighed the charges, the evidence, and then the report of the Commission. Five of these gentlemen, consisting of two merchants, two bank employés, and a ship surveyor, do not hesitate to put on record (according to Mr. Anstey's letter, for otherwise I have not heard a syllable on the subject) letters which, while they show the amount of party feeling existing on this subject, also convict the writers of a want of that calm and deliberate consideration which in that case was specially demanded.*

76. The name of Mr. Bridges is, of course, introduced by Mr. Anstey into this letter, as having said something on the Club steps about Mr. Anstey leaving the Colony within eight weeks, and that gentleman has requested me to mention that this statement is totally without foundation, and, in fact, his shattered health had, until the last few days, been such as to prevent his doing more than move from his private residence to Government offices and back again.

77. As the Executive Council consists but of three members in addition to myself, viz., the Lieutenant-Governor, Lieutenant-Colonel Caine; the Senior Military Officer, Major-General Sir Charles van Straubenzee, K.C.B., (who was quartered at Canton, and only visited Hongkong on receiving summons from me to attend the sittings of Council), and Mr. Bridges, who very properly† declined to vote on any matter relative to Mr. Anstey. I was under some difficulty as to the procuring the necessary quorum of two besides myself, when taking the advice of my Council in these troublesome questions.

78. But there was, moreover, an additional peculiarity about this case, laying entirely aside Mr. Anstey's conduct with regard to Mr. Caldwell individually, and also the offensive and hostile attitude he had taken up with regard to the Colonial Government before the Commission. I had also to point out to the Council the incessant perturbations of the public peace emanating from the Attorney-General, and which almost by themselves demanded his removal. The details of Mr. Anstey's previous dissensions were all on record, and were well known to him at any rate, and while referring to them as matters of history, in asking the advice of my Council, I did not think it necessary to found specific charges upon them.

79. You will find, Sir, Mr. Anstey raising technical objections as to the form of the proceedings before the Council. Taking what I have mentioned in the three preceding paragraphs into your consideration, you will be able to judge whether Mr. Anstey had not only, in fact, the opportunities for a sufficient defence required by the Colonial Regulations, but, even more, Mr. Anstey having, as I have before stated, been put fully on his guard by the letter of 23rd July, as to the possibility of his case being brought before the Council, sent in his letter in answer to me, after more than a week's delay.

80. That letter I deemed most unsatisfactory, and the General having come down from Canton on Monday, August the 2nd, I summoned the

* The Justices thus alluded to were the Honourable John Dent, M.L.C., Mr. J. D. Gibb, Mr. Patrick Campbell (manager of the Oriental Bank), Mr. W. Lamond (Sub-manager of the Oriental Bank), and Captain Rickett, all of whom agreed that Mr. Caldwell was unfit to remain in the commission of the peace, and were the Justices who also concurred in the opinion of the minority as alluded to *antè* p. 502.

† See the reason assigned by him, *antè* p. 514.

Chap. XXIII. 1858. Executive Council, laid Mr. Anstey's letter on the table, stating it in my opinion to be unsatisfactory, and then proceeded to lay before them all the matters connected with Mr. Anstey, which had compelled me to resort to them for advice.

81. On the documents and statements then considered by the Council, certain resolutions were passed by it, which without in any way determining whether the Attorney-General should or should not be suspended from office, were to be taken as expressions of opinion by that body, on Mr. Anstey's general conduct, and not without weight as to the propriety of continuing him in his position, when the question of his suspension afterwards came before it.

82. The second of these resolutions may demand some explanation; the others will, I think, speak for themselves. I particularly drew the attention of the Council to the subject matter, which was afterwards embodied in the second resolution, because having received from Mr. Labouchere, then Secretary for the Colonies, with regard to Mr. Anstey, certain instructions to be pursued with regard to his suspension, when he had wrongfully accused the Chief Justice.* I thought the precedent useful for the information of the Council, and I also thought it fair to point out to Mr. Anstey, who stood in a similar position now with regard to myself and the acting Colonial Secretary, to the one formerly held by him towards the Chief Justice, how narrowly he had before escaped the punishment again impending over him.

83. I incur the risk of wearying you, Sir, with all these minutiæ, because after having taken every step with the most cautious deliberation which the peculiar circumstances of the constitution of my Executive Council admitted, I find it, and myself, violently assailed Mr. Anstey, for having condemned him untried and unheard.

84. If I have erred in any way against the spirit of my instructions, it has been by excess of opportunities for defence afforded to this turbulent man, certainly not by any restriction of such opportunities.

85. The General was compelled to return at once to Canton; and having named the following Saturday as the day on which he could most conveniently attend to form a quorum, I caused the resolutions of the day's Council to be conveyed to the Attorney-General, with an intimation that he had until the following Saturday to send in in writing such further statements as he might deem necessary.

86. The records of the Colonial Office will exhibit proofs of the wonderful facility with which Mr. Anstey runs over the most voluminous epistles, and even from him I did not expect the plea that four days, totally free from all official business whatsoever, was too scant a period for the preparation of his defence. A portion of the 3rd of August, one of those given him for his defence, was employed in producing the letter of that date.

87. Having been allowed the perusal of all the extracts of despatches which had been laid before the Council, many of these being the despatch in its entirety, he invents a grievance because he was not allowed the perusal of documents which in no way related to him; he then proceeds to impugn the regularity of the proceedings of the Council, while protesting against its jurisdiction, and finally calumniates in as far as in him lies each member of Council in succession, by a *tour de force* which it is impossible to explain or to understand; he attempts to make out that it is the acting Colonial Secretary who is on his defence, and not himself; and that because the Lieutenant-Governor in April last entertained,† as he still does, a strong feeling of friendship for Mr. Bridges, therefore in August (Colonel Caine) should not sit in

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* *Antè* Chap. XVI. § II., p. 386.
† *Antè* Chap. XXI., pp. 472, 473.

Council on Mr. Anstey : again, because through his overbearing disregard of all rules not framed by himself, he was taken up by the Provost Marshal in Canton, and locked up for the night last January,* he imputes a bias to Sir Charles Van Straubenzee, which is to over-rule the obligation of his oath of office.

88. Mr. Bridges, as usual, is grossly slandered ; and although Mr. Anstey had seen from the proceedings in Council that gentleman declining to vote, in order to avoid the appearance even of unfairness towards his bitter persecutor,† yet the Attorney-General does not hesitate to inform his superior officer, the acting Colonial Secretary, "You more than myself on your trial, and greedy for my succession." I need not also remind you that it is with Mr. Bridges' most ready concurrence that I have since appointed not Mr. Bridges, but another gentleman, to act in the office vacated by Mr. Anstey.

89. Of myself it is said, by my legal adviser, that, disguise it as I may, I am his chief accuser. For once Mr. Anstey has merely stated the truth ; I am his chief accuser, and I am so as the representative of Her Most Gracious Majesty the Queen, as the guardian of public morality, and the highest official authority for the maintenance of law and order, I feel my responsibility, and certainly do not shrink from it.

90. I crave your particular attention to this letter, Sir, for it and the similar and subsequent memorandum are not among the lightest reasons which necessitated the removal of Mr. Anstey from the public service.

91. I saw nothing in this letter of Mr. Anstey's to alter my determination of referring his case to the consideration of the Executive Council, and I therefore directed an intimation to be conveyed to him that, as he himself requested at the conclusion of the document, it would be submitted to that body.

92. Sir Charles Van Straubenzee having again returned from Canton for the express purpose, the Executive Council assembled on Saturday, August the 7th, to consider the propriety of suspending the Attorney-General. It was summoned to meet at ten o'clock, and about that hour the accompanying memorandum was received from that officer. This document demands the following observations from me. The protest against the jurisdiction of the Council is repeated, with this addition, that such jurisdiction had never existed. A statement is made that Mr. Anstey had not sufficient time allowed him to prepare his defence, because during part of the days allotted to him, he was employed on heavy professional business, "three whole days," according to his letter. You will observe, from the minutes of Council how even this fact is exaggerated : on two of the four days there was no Court business whatsoever ; on the other two days the Court did not sit until two p.m., and on one of these last mentioned days, Mr. Anstey's professional business did not occupy half-an-hour. Besides, his business was private, not official, and could easily have been adjourned, had he desired it. I am thus particular in dealing with this point to show that even to a slow penman there would have been no hardship ; whereas by a writer of Mr. Anstey's extraordinary power of execution in covering quires of paper, the allegation of want of time seemed out of place. The pretext of the appeal to your superior jurisdiction is still persevered in. If Mr. Bridges has been more or less at issue with every other department, such a fact has not come within my cognizance, and has assuredly not assumed an official shape.

93. But, above all, must I observe upon the astonishing fabrications which are to be found in paragraph No. 29, and the still more remarkable outburst of insubordinate feelings in the conclusion of this memorandum. It is absolutely false that Dr. Bridges obtained in the name of the Governor a day and an hour for making comments upon Mr. Anstey's testimony. Dr. Bridges did

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* *Antè* Chap. XX. § II., p. 463.

† The real reason assigned by Dr. Bridges for not voting was stated by him at the time of Mr. Anstey's suspension—see *antè* p. 514 ; also see Chap. XXIV., *infrà*.

Chap. XXIII. — 1858.

it *proprio motu* without even mentioning the matter to me at all, and he did so, as I have above stated, in consequence of the unprovoked allusion, on Mr. Anstey's part, to malpractices of his as acting Attorney-General. It is absolutely false that I entrusted to Mr. Bridges for the purpose in question any documents on any day. The documents which Mr. Bridges produced were the originals, which were in his own possession, and several of which I have never seen up to this moment, nor did they emanate from my Government; such, for instance, as a private letter from Mr. Mercer, a letter from Admiral Sir J. Sterling, and addresses from the English and Chinese communities here, copies of all of which Dr. Bridges informs me were lodged in Downing Street in 1856. It is absolutely false, and Mr. Anstey never had a shadow of a ground for saying that the charge of constitutional aberration from truth which Dr. Bridges undoubtedly did retort on Mr. Anstey was made in my name, or with my knowledge. Dr. Bridges had himself to defend, and is quite capable of doing so, without using me as a shield. Mr. Anstey had, therefore, none of the justificatory reasons which he alleges in support of his betrayal of my confidence and distortion of my words, and certainly no attempted justification was ever put in a more offensive shape by an inferior to a superior.

94. The Executive Council assembled, as I have stated, at 10, and sat until four: its minutes will detail to you the course of its proceedings, which, I say in all honesty, fairly exhausted the whole subject before coming to a decision.

95. Mr. Anstey's suspension was decided upon on several grounds, each of which was, in my opinion, more than sufficient to incapacitate him from a further tenure of office: his incessant quarrels, his unsoundness and dangerous character as the confidential law adviser of the Crown, his conduct throughout the Caldwell Commission, both as regards his superior and inferior fellow-servants of Her Majesty, the insubordinate, intemperate, and offensive attitude which he assumed towards myself as Governor, and towards the Executive Council as a body.

96. This suspension, without doubt or hesitation, I ask you to confirm: no man has ever had greater latitude allowed him than Mr. Anstey, under my Government. No man could have abused his liberty more, and it is fit that he should reap as he has sown.

97. In the position in which this Colony and I, personally, have been placed during a period of extreme solicitude, perplexity, and responsibility, it has greatly added to my anxiety and labours—greatly interfered with the quiet and serious discharge of singularly complicated public duties—to be scarcely ever free from reference in some or other misunderstanding among officials in the Colony—almost always created or fanned by Mr. Anstey's intemperance. He has appeared to me unable to exist out of a turbulent and tempestuous atmosphere, and to possess the unhappy art of creating storms which it is not so easy to appease; and, on a review of the past, I feel that I can far more easily justify the final resolution in which I have been supported by the cordial unanimity of my Council, than excuse myself for having so long submitted to so much insubordination and disrespect; insubordination to my authority—disrespect to my station and my years.

I have, etc.,

(Signed) JOHN BOWRING.

The Right Honourable
Sir EDWARD B. LYTTON, Bart., M.P.,
*Secretary of State for the Colonies.*

Masterly for its purpose as this despatch may appear, its immediate purport, as it so clearly shows, was, nevertheless, but an intemperate onslaught upon Mr. Anstey consequent upon his unwise disclosures, and in extenuation and vindication of the conduct—and of Sir John Bowring's extraordinary but now necessary support—of Dr. Bridges and his acolyte, Mr. Caldwell. In his endeavour to save his now tottering administration, and to exculpate these two unprincipled persons, Sir John Bowring, as has been seen, neither spared those officials who had run counter to his views, or rather the wishes of Dr. Bridges and Mr Caldwell, nor even the Justices of the Peace who had voted in the minority which had considered Mr. Caldwell unfit to be a Justice of the Peace,* or the Caldwell Commission of Inquiry which had disposed of the charges drawn up by Dr. Bridges,† and which Commission never for a moment anticipated such a termination, as the result of their delicate labours.‡

Taken with the facts now familiar to the reader, it was therefore not astonishing that the Newcastle Foreign Affairs Association, when addressing the Duke of Newcastle on the subject of Mr. Anstey's treatment,—which, it is needless to say, met with resentment from various other quarters in England,—should have said that they had convicted Sir John Bowring of "falsehood."§ The records hereafter will show that while Mr. Anstey's dismissal rested indirectly on his indiscretions and subsequent relations with the Government, and that Mr. May was completely absolved of all imputations, both Dr. Bridges and Mr. Caldwell met with nothing but their long and well-merited deserts.

The Bishop of Victoria takes a charitable view of Sir John Bowring.

The Bishop of Victoria, who until this time had kept well aloof from all the dissessions prevailing in Hongkong, must have been disgusted to find that a communication of his, addressed to a private friend at Home, was reproduced in *The Record*, a paper published in England. That part only having immediate concern with the present work is now extracted, and, coming from the source it does, may be taken as a fair exponent of the true state of affairs then prevalent in Hongkong. As will be seen the bishop evidently had ransacked his chalice of charity to give Sir John Bowring its contents. His letter was dated 'Hongkong, August 24th, 1858.'

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"Our Governor, Sir John Bowring, looks very ill; and I think he cannot last very much longer with his many harassing cares in this trying climate.

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* See paragraph 75 of Sir John Bowring's despatch, *antè* p. 531.
† See paragraph 38 of Sir John Bowring's despatch, *antè* p. 523.
‡ Paragraph 74 of Sir John Bowring's despatch, *antè* pp. 530, 531.
§ See Chap. XXXI., *infrà*. Also article in *The Morning Herald* of the 28th April, 1859,—Chap. XXVI., *infrà*.

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He is involved in a great deal of trouble just now in the internal administration of the Colonial Government; it is likely that the matter may be mooted in the House of Commons. I hope Conservatives and churchmen may pursue a generous part towards him. He is undoubtedly an able and well-intended man, and both as Consul at Canton in former times, and more recently as Governor of this Colony, he has always maintained an example of the strictest morality.

He belongs to an unsatisfactory political and religious school; but, in personal kindliness of disposition and a desire to benefit the local Chinese population, he has shown himself worthy of every consideration. He has fallen on troublous times. His wife is lately gone to England, having never recovered the effect of the Chinese poisoning.* The greatest enemy Sir John Bowring ever had would be melted to pity and sympathy if he could see the slow but certain progress of sickness and infirmity creeping over him. His public policy and local politics I, of course, have nothing to do with."

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The statement in this letter that Sir John Bowring "cannot last much longer with his many harassing cares" and that his "greatest enemy would be melted to pity and sympathy if he could see the slow but certain progress of sickness and infirmity creeping over him" cannot at this date be thought otherwise than ludicrous. Sir John Bowring, who was now sixty-six years of age† whatever he may have looked, evidently could not have been so bad, for not very long after the death of his wife he re-married, which gave rise to the most jocular remarks upon the subject locally, and, as will be seen, he did not die till 1872, fourteen years after the above letter was written.‡ As to the statement that "Sir John Bowring belonged to an unsatisfactory political and religious school"§ and that as regards "his public policy and local politics" the bishop, "of course, had nothing to do with," that seemed inevitable, though these appeared to be the very points on which satisfaction had been required of the Governor. It is hardly necessary to say that advantage was now taken of this letter to heap further abuse upon Sir John Bowring, though it must be admitted that he had made a great mess of things generally in Hongkong.

Sir John Bowring as belonging "to an unsatisfactory political and religious school."

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* See *antè* Chap. XX. § II., p. 471.
† He was born in 1792—*antè* Chap. XI., p. 227, *note*.
‡ See Chap. XXVII., *infrà*.
§ Sir John Bowring was a Radical in politics and a Unitarian by religion.

# CHAPTER XXIV.

## 1858.

Mr. Inglis appointed Harbour Master and Marine Magistrate.—Mr. J. Scott, Governor of the Gaol.—Chinese callousness with respect to suicide. A triple suicide in the Gaol.—Mr. Scott confirmed as Governor of the Gaol.—Dr. Bridges wishes to be relieved of the acting Colonial Secretaryship.—The Attorney-Generalship in view.—Condition on which Dr. Bridges was prepared to remain in office. –Resignation of Dr. Bridges. Mr. Forth, acting Colonial Secretary.—Mr. Anstey goes to Manila.—Death of Mr. Day, acting Attorney-General —Secretary of State's approval of Mr. Day, as acting Attorney-General. —Mr. Green appointed acting Attorney-General.—Criticism.—Meeting of the Legislative Council.—Freedom of speech. Governor Bowring's proposal to make members of Council answerable for attacks on private character.—Sir John Bowring's explanation of the 'distorted' statements made by Mr. Anstey in regard to Dr. Bridges and himself at the opium monopoly inquiry.—The Secretary of State upon the careless manner in which legislation had been conducted in the introduction of Acts of Parliament not applicable to the Colony.—Lists of Imperial Enactments and Rules and Orders of the Superior Courts at Westminster which were introduced by Ordinance No. 5 of 1858.—The Secretary of State's despatch.—The report of Sir Frederic Rogers and Mr. Merivale.—Disallowance of Ordinance No. 13 of 1858.—Disallowance, when notified.—Sir John Bowring's appointment of Dr. Bridges as counsel to the Superintendency of Trade on the suspension of Mr. Anstey.—Mr. Anstey's complaint to the Secretary of State.—Sir John Bowring's despatch. —Mr. Anstey and Dr. Bridges resume their old conflict.—An unpleasant scene in the Supreme Court.—The Chief Justice's attitude.—Mr. Anstey on Dr. Bridges. He breaks out in poetry.—Dr. Bridges' gorgeous signboards.—Professional etiquette.—Mr. Anstey and Dr. Bridges in Court again. 'Legal practitioners who swing Chinese signboards upon the public road.' The decorous behaviour of the Chief Justice.—Execution of a private of the Royal Marines on board H.M.S. *Hesper* for murder.—A subsequent case in which a soldier who murdered a comrade was handed over to the civil authorities.—Ma Chow Wong and other convicts despatched to Labuan.—Mr. Caldwell's grief.—Ma Chow Wong in Labuan.—Conspiracy to murder. His sentence increased.—The free pardon subsequently granted him.

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Mr. Inglis appointed Harbour Master and Marine Magistrate.

Mr. J. Scott, Governor of the Gaol.

At a meeting of the Executive Council held on the 25th August, Mr. Inglis, the Governor of the Gaol,* received the appointment of Harbour Master and Marine Magistrate in succession to Captain Watkins,† being afterwards confirmed in the appointment. Mr. Joseph Scott replaced Mr. Inglis. Mr. Scott, formerly in the ranks of the army, had for some time been employed in the Surveyor-General's Department.

Chinese callousness with respect to suicide.

A triple suicide in the Gaol.

An account of a triple suicide in the Gaol, not unlike that recorded in this work early in 1845,‡ characteristic of Chinese callousness with respect to suicide by hanging, was given by Mr. Inglis shortly before severing his connexion with the Gaol. Mr. Inglis reported that three pirates, who had been committed for trial and were confined together in one cell where there was a window with two iron bars, determined upon taking the jurisdiction of the case into their own hands, instead of undergoing the additional troubles of confinement and of trial at the Criminal

* See *antè* Chap. XVIII., p. 428, as to this title.
† *Antè* Chap. XIV. § II., p. 342.
‡ *Antè* Chap. III. § II., p. 75.

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Sessions, and having condemned themselves to death, doubtless anticipating their fate, these men determined upon hanging themselves from the iron bars of the window. The way in which they proceeded was by two of them first suspending themselves with the aid of the third, and when animation in these two was extinct, the third cut down one of his dead comrades gently, laid him on the floor, and then suspended himself by his own tail, and all this was done so quietly, that the suspicion of the sentry at the window was never roused by any sound!

Mr. Scott confirmed as Governor of the Gaol.

By Government Notification on the 23rd May, 1859, Mr. Scott was confirmed as Governor of the Victoria Gaol.

Dr. Bridges wishes to be relieved of the acting Colonial Secretaryship.

As may be remembered Dr. Bridges had asked at the latter end of July last to be relieved of the acting Colonial Secretaryship.* This could not have been simply on the ground, as alleged, that he wished "to resume the exercise of his profession" as he already enjoyed the extra privilege of private practice, and other reasons must be sought for, namely, that he had sickened under all the disclosures that had been made in reference to himself† and also

The Attorney-Generalship in view.

that, given a reasonable lapse of time between his resignation of the acting Colonial Secretaryship and the supercession of Mr. Anstey, he would stand a chance of receiving the substantial appointment, the more so as he had been recommended for the post by Sir John Bowring, in the event of Mr. Anstey's suspension being confirmed.‡ Accordingly on the 26th August, he again addressed the Governor and asked to be allowed to resign, the latter asking him, in reply, to defer his resignation "until the inquiries connected with Mr. May" in reference to charges brought by the latter in conjunction with Mr. Anstey against Mr. Caldwell "shall be terminated."

Condition on which Dr. Bridges was prepared to remain in office.

Dr. Bridges then stipulated that he would consent to remain in office "on the understanding that he held the position until Mr. Mercer's return." To this Sir John Bowring could not accede, and on the 28th August Mr. Forth, the Treasurer,§ was

Resignation of Dr. Bridges.

Mr. Forth, acting Colonial Secretary.

gazetted acting Colonial Secretary. Dr. Bridges further accentuated his resignation of the acting Colonial Secretaryship by also resigning his Commission of the Peace on the 10th September, when his name was removed from the list of Justices.

Mr. Anstey goes to Manila.

On the 5th September Mr. Anstey, who since his suspension had remained in the Colony exercising his right of private practice, left for Manila on six weeks' leave of absence. A few days after his departure, on the 21st September, Mr. Day, the

Death of Mr. Day, acting Attorney-General.

acting Attorney-General,‖ died. He was thirty-nine years of age

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* *Antè* Chap. XXIII., p. 509.

† *Antè* Chap. XXI., p. 472; Chap. XXIII., p. 505; see also paragraphs 56-58 of Sir John Bowring's despatch, *id.*, p. 527.

‡ *Antè* Chap. XXIII., p. 516.

§ *Antè* Chap. XVIII., p. 427.

‖ *Antè* Chap. XXIII., p. 515.

and the senior barrister in practice in the Colony. It will not be inappropriate here, considering the position he held at the time, and at a very trying period, it will be admitted, to reproduce what was said locally of this gentleman on the occasion of his death:—

"We have to notice the death of Mr. John Day, the acting Attorney-General, from an attack of acute dysentery. He passed as a barrister of the Middle Temple in 1849, had some practice on the circuits, and in the end of 1855 came out to this Colony, where his sound judgment and remarkable industry gave him a high position. Mr. Day held himself very much aloof from colonial matters, but all the more on that account was he to be valued in the exercise of his own profession. Shortly after arriving here, an opinion of his, passed in ignorance of the place, was turned to a special purpose by the ingenious hands of Mr. Anstey; but after that, he followed the wise course of confining himself to a conscientious fulfilment of his own special duties. Nor were these discharged by him from a purely legal or narrow point of view. As the legal examiner for the Caldwell Commission, and afterwards the commentator on the proceedings of that intelligent Court,* he steadily brought to bear upon the subject an amount of common sense, legal acumen, and gentlemanly feeling, which were most serviceable to the Colony; and we cannot forget that on that, and one or two kindred subjects, it was from Mr. Day we first heard a fair intelligent opinion, unbiassed by private interest or personal prejudice. But it is useless to speak good of one who has entered into the 'Happy Valley.' Rather, seeing how soon, in these latitudes, the night comes in which no man can work, it would be well if we all considered how mean, how miserable, our petty strivings for wealth, influence, and position are, and sought, more simply, to live worthy lives—the sole necessity to fearless deaths."

Secretary of State's approval of Mr. Day, as acting Attorney-General.

On the 18th January, 1859, it was notified that the Secretary of State had approved "the provisional appointment of Mr. Day (since deceased) as Attorney-General of Hongkong pending the decision of Her Majesty's Government on the suspension from office of Mr. Anstey."†

Mr. Green appointed acting Attorney-General.

On the 23rd September Mr. Frederick William Green was gazetted acting Attorney-General in the place of Mr. Day, deceased, and during the suspension of Mr. Anstey. This ap-

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* See *antè* Chap. XXIII., p. 507, and paragraph 65 of Sir John Bowring's despatch, *id.*, p. 529.

† The following obituary notice appeared in *The Law Times* in reference to Mr. Day:—

"The late John Day, Esq., who died whilst holding the post of acting Attorney-General at Hongkong, was the eldest son of John and Amelia Day, of Woodland House, Wellington, Somerset. He was born at Milverton, in Somerset, on the 9th December, 1818. He received his education at the Grammar School at Ilminster, under the late head master, the Rev. John Allen, M.A., where he early distinguished himself as a classical scholar. After leaving school, he was articled to and served his time with Messrs. Norton and Chaplin, of 3 Gray's Inn Square. In 1840 he was admitted a solicitor and attorney-at-law, and practised in that branch of the profession for some years at Maidenhead, Berks. and at Taunton, Somerset. In Michaelmas Term 1839 he embraced the higher branch of the profession, and was called to the bar at the Middle Temple. He went the Western Circuit and Somerset Sessions until the latter part of 1854, when he proceeded to Bombay. In the autumn of 1855 he went on to Hongkong where he settled and practised at the bar; and where he soon obtained a very extensive amount of business. In the beginning of August last, on the suspension of T. Chisholm Anstey, Esq., Mr. Day was appointed acting Attorney-General for Hongkong, which appointment he held at the date of his death, the 21st September following. He was married on the 1st October, 1851, to his cousin Miss Elizabeth Catherine Day, daughter of the late Alexander Day, Esq., of Milverton, Somerset, and grand-daughter of the late Rev. Samuel Ashe, rector of Langley Burrell, Wilts. Mr. Day has left no children. His wife survives him, and is now on her way to England from Hongkong. Mr. Day has a brother, Lieutenant Estcourt Day, of the 26th Cameronians."

Chap. XXIV. 1858. Criticism.

pointment took the public by surprise, because neither his short experience in Hongkong nor the state of his health entitled Mr. Green to the post, at all events over Mr. Kingsmill, who not only had prior claims as Mr. Green's senior, but also as having previously filled the office during Mr. Anstey's leave in India, the year before,* in a satisfactory manner, and especially as he had been a candidate for the position with Mr. Day at the time of Mr. Anstey's suspension.† Mr. Green took his seat in the Legislative Council on the 4th October, his appointment as acting Attorney-General in place of Mr. Day being gazetted on the 12th February, 1859, as being approved by the Secretary of State. A singular coincidence to be noted in regard to this second appointment to the acting Attorney-Generalship consequent upon Mr. Anstey's suspension, and denoting an unlucky omen, was, that in December, 1859, Mr. Green found himself compelled to resign the appointment owing to ill-health, dying some time after.‡

Meeting of the Legislative Council.

Freedom of speech.

Governor Bowring's proposal to make members of Council answerable for attacks on private character.

At the meeting mentioned above, Sir John Bowring proposed to introduce a clause in the rules, making members of the Council responsible at common law for any attacks they may make on private character. As will be seen the Legislative Council was divided as to its claims to what really amounted to Parliamentary privilege of entire freedom of speech, except as limited by its own rules, a majority, however, being opposed to the addition proposed by the Governor. The following is taken from the records of the time upon the subject:—

"The Governor then stated that, owing to what had taken place in Council on the 10th and 15th of May last,§ he found it imperative to propose an addition to the 16th regulation of the Legislative Council. That rule was—

'The members of Council shall have freedom of speech, and shall not at any time be questioned by Government for anything they have said therein;' —and he proposed to add the words,—'But the privilege of Council shall not protect any member in the utterance of slanderous or libellous matter, affecting the private character of individuals.' He intended to send this proposal Home, but before doing so, should like to afford the Council an opportunity of expressing its opinion upon it.

Mr. Dent objected to the clause, because the Council was a society of gentlemen, who were not to be supposed capable of uttering slanderous matter.

Mr. Davies raised several objections, the chief being, that the eighteenth clause of the present rules provided the proper remedy. As connected with this matter, he would now request leave to table a protest, which had been intrusted to him by a member of the Council, regarding a breach of privilege. [On being asked if he professed to represent a member of Council, Mr. Davies stated that he held the protest from Mr. T. C. Anstey, who was still Her Majesty's Attorney-General, and had not been ungazetted as a member of Council.] The protest referred to reference which had been made, after the rules came into force, to language used by Mr. Anstey several months ago.

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* *Antè* Chap. XIX., p. 439.

† *Antè* Chap. XXIII., p. 514.

‡ See Mr. Green's resignation noticed in Chap. XXX., *infrà*, and his death in Vol. II., Chap. XXXVI.

§ See paragraph 35 of Sir John Bowring's despatch, *antè* Chap. XXXIII., p. 523.

The protest of Mr. Anstey, which related to a circular the Governor sent round the members of Council, and to the ascription to Mr. Anstey of the charges brought before the Caldwell Commission, was then read, and, on the motion of the Governor, was entered on the minutes.*

Mr. Lyall objected to the proposed addition to Rule 16th. He should be sorry to suppose that the authority of His Excellency, or whoever might be president of the Council, would be insufficient to prevent or restrain the utterance of slanderous matter. In the event of any member commencing to use slanderous language, it would be quite sufficient for the president to interfere, to demand an apology, or to put into force Rule 18, which provided that the imputation of improper motives might be considered "disorderly."

The Surveyor-General thought that the proposed addition would cast a slur on the members of Council as gentlemen. Any libellous charges would be reported, and punished in the usual way.

The Chief Justice said, in such a case as that just mentioned, it was the publisher of the libel who would be responsible.

On a vote being taken, the motion was negatived by 2 to 6, the division being—

| *Ayes.* | *Noes.* |
|---|---|
| Acting Colonial Secretary. | Mr. Dent. |
| Lieutenant-Governor. | Mr. Lyall. |
| | Chief Magistrate. |
| | Surveyor-General. |
| | Acting Attorney-General. |
| | Chief Justice. |

Mr. Dent remarked that, as His Excellency intended to send the proposal Home, he also should like to send his objections to it, and was informed that he would be at liberty to do so."

Nothing further is to be found upon the subject in the records.

The Governor, at this meeting, as he had previously done in the

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* The following is the protest alluded to :—

"*Minute of Protest of Privilege.*

"My attention is drawn to a publication in *The Hongkong Government Gazette* of Saturday last, the 31st ultimo, of a Warrant of Commission bearing date the 20th May last, and having a 'List of Charges' appended. The publication is said to be 'by Order,' and 'for general information.'

"The Commission states, that 'those charges embrace certain accusations,'—recited in the preamble to have been 'brought in the Legislative Council, and in official documents, by myself against the Registrar-General, and to necessitate an Inquiry' :*—and it directs certain Commissioners thereby appointed, to inquire into the same :—and 'all Persons in the Public Service' are charged 'to be aiding and assisting unto them therein.'

"I have also perused a Circular Letter under His Excellency's own hand, addressed, on the 24th ultimo, to every Official Member of the Legislative Council, except myself :—whereby, such Member is, in effect, required to answer in writing, whether or not certain words therein specified, and bearing directly on the subject matter of the said 'List of Charges' and Commission, were used by me in the Debates of the said Council, in May last, and by way of an 'intemperate attack upon the Registrar-General.'

"It appears that no inquiry whatever has been addressed to any of the non-official Members of Council on the subject ; and I can state that I have received none.

"With the truth or falsehood of the recitals and averments in the said Commission, I do not mean to trouble this honourable Council, beyond once more recording my emphatic denial, that the 'List of Charges'—by whom prepared I know not†—does 'embrace the accusations made by me against the Registrar-General ;'—a contradiction which, from the 24th May last, the earliest opportunity I had for giving it, down to the present time, has been repeatedly officialized by me, and received without dissent or observation.‡

"But, I do ask this honourable Council to admit this my protest against the above acts of the Government, as being a manifest, deliberate, and persevering violation of its

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* *Ante* Chap. XXIII., p. 503.

† See Paragraph 38 of Governor Bowring's despatch, *ante* Chap. XXIII., p. 523.

‡ *Ante* Chap. XXIII., pp. 503, 510.

Chap. XXIV. 1858.

Sir John Bowring's explanation of the 'distorted' statements made by Mr. Anstey in regard to Dr Bridges and himself at the opium monopoly inquiry.

Executive Council,* now took the opportunity of again referring to the questionable disclosures in reference to himself and Dr. Bridges, made by Mr. Anstey at the inquiry in the matter connected with the opium monopoly and Dr. Bridges, in May last,† showing how much he felt these disclosures having been made. He spoke with much warmth and feeling, especially when alluding to Mr. Anstey's breach of confidence. He began by calling the attention of Council to the fact that the public business of the Colony had been interrupted for some time by a variety of causes, and continued as follows:—

"Recent events had induced the Executive Council to suspend Mr. Anstey, the Attorney-General, and had led to the resignation of Dr. Bridges, the acting Colonial Secretary. Illness and death, also, had added to the embarrassment caused by these changes. When Mr. Day was made acting Attorney-General, a quantity of business, and a vast mass of documents were placed in his hands, but illness prevented his performance of the duties, and on Mr. Day's death the arrears of business were passed over to Mr. Green. Recent unpleasant events had been laid before the Home Government, in one of the longest despatches ever sent by a Colonial Governor;‡ but," continued His Excellency, "I must, in justice to others, briefly remark on one subject. It is a grave error, if expressions are repeated that have been uttered in the intimacy and under the protection of social intercourse, and which are calculated to wound the feelings or damage the reputation of another. It is still worse if a lawyer give publicity to communications made to him under the supposed secure guardianship of professional confidence. And it is a far more inexcusable and even serious offence if the Law Adviser of the representative of his Sovereign shall divulge the most secret and unreserved—unreserved because supposed to be sacred—communications of that representative,—and the offence is greatly magnified if, by special arrangement on the part of the offender, the public press is called in to give its multitudinous echoes to such privileged communications,—but worst of all, if these communications have been distorted, misrepresented, and tortured into meanings they were never meant to convey. Of this, I am bound to say, and of much more, the late acting Colonial Secretary has a right to complain, and I owe this explanation to him,§ to myself, and to the Legislative Council of which he was a member. The opinion of Her Majesty's Government will, no doubt, be conveyed to me on this and indeed on the whole matter."

The Secretary of State upon the careless manner in which legislation had been conducted in the

At the above meeting the Governor also intimated that he had received a despatch from the Secretary of State, complaining of "the careless manner" in which legislation had been conducted in Hongkong in the introduction of Acts of Parliament not applicable to the Colony, and, continuing, said:—

"This was the business of the Attorney-General, who alone could be

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privileges, solemnly recognized by the sixteenth of His Excellency's own '*Standing Orders and Rules for the Council of Hongkong*,' which has been approved by Lord Stanley, the Secretary of State, and is as follows:—

"'The Members of Council shall have freedom of speech, and shall not, at any time, be questioned by Government for anything they have said therein.'

"I desire that this protest may be recorded.

T. CHISHOLM ANSTEY, M.L.C.,
*H. M. Attorney-General.*"

Hongkong, 2nd August, 1858.

* *Antè* Chap. XXIII., p. 511.

† *Id.* p. 505.

‡ Sir John Bowring no doubt here referred to his despatch reporting Mr. Anstey's suspension, *antè* Chap. XXIII., p. 516.

1858. introduction of Acts of Parliament not applicable to the Colony.

expected to look over the Acts of Parliament and know if their* provisions were such as should be adopted here. Some Acts had been introduced, though there was no machinery to carry them into effect. In consequence of the illness and subsequent death of Mr. Day, the acting Attorney-General, the preparation of an Ordinance to correct 'the careless manner' in which, as pointed out by the Secretary of State, some of the Imperial Acts were extended to this Colony by Ordinance No. 5 of 1858, had been delayed; but Mr. Green, the present acting Attorney-General, was actually engaged in drawing up the needful Ordinance for submission to the Council."*

This statement was indefinite enough, but in fairness to Mr. Anstey it is but right to say that some of the measures referred to by the Secretary of State were the direct instruments of Dr. Bridges while acting as Attorney-General,† though that Mr. Anstey himself had been precipitate in the introduction of Home legislation without much consideration as to its effect,—as witness the precipitancy with which Ordinances Nos. 5, 6, and 7 of 1856, before referred to, were brought into operation despite the protest of the legal profession,—cannot be gainsaid.‡

List of Imperial Enactments and Rules and Orders of the Superior Courts at Westminster which were introduced by Ordinance No. 5 of 1858.

At this stage it may not be inappropriate to reproduce in full the list of Imperial Enactments or portions of same as well as the Rules, Orders, and Regulations of the Superior Courts of Law and Equity at Westminster which by Ordinance No. 5 of 1858, the subject of the Secretary of State's Despatch, were introduced wholesale into the Colony without any debate or consideration :—

THE FIRST SCHEDULE TO WHICH THE ORDINANCE REFERRED.

IMPERIAL ENACTMENTS.

| *Date of the Act.* | *Title or Subject of the Act.* | *Extent of operation intended to be hereby given to the Act.* |
|---|---|---|
| 19 Vict. c. 117. | *Principal Officers of the Ordnance.* | The whole of the Act. |
| 20 Vict. c. 47. | *The Joint Stock Companies' Act, 1857.* | Sections 14, 28 to 31, both inclusive; 41 to 47, both inclusive; 53 to 57 both inclusive, the whole of part 3 and section 115. |

* See the debate in Council upon this point and the acting Attorney-General's remarks thereon,—Chap. XXV., *infrà*.

† Dr. Bridges acted as Attorney-General on two occasions (1) from the 28th February, 1852,* to the 13th February, 1853,† and (2) from the 12th April, 1854,‡ to the 15th January, 1856.§ During the first period that he held the position, no Imperial Act was introduced into the Colony, but the second time he was acting Attorney-General, several enactments were passed incorporating Home legislation—see more particularly Ordinance No. 3 of 1854, passed on the 31st October, 1854, "An Ordinance to declare certain Acts of the Imperial Parliament to be in force in this Colony;" ‖ Ordinance No. 6 of 1855 "for the amendment of the civil administration of Justice," passed on the 25th August, 1855; and lastly Ordinance No. 3 of 1856, drafted by him and passed by the Legislature on the 29th January, 1856, "declaring certain Acts of the Imperial Parliament to be in force in the Colony of Hongkong."¶

‡ *Antè* Chap. XVI. § II., pp. 376, 382.

* See Chap. XIII., *ante* p. 322.
† See Chap. XIV. §I., *ante* p. 331.

Chap. XXIV. THE FIRST SCHEDULE TO WHICH THE ORDINANCE REFERRED.—*Continued.*

1858.

| *Date of the Act.* | *Title or Subject of the Act.* | *Extent of operation intended to be hereby given to the Act.* |
|---|---|---|
| 21 Vict. c. 14. | *The Joint Stock Companies' Act, 1857.* | Sections 1, 2, 3, 11 to 21, both inclusive; 23, 24 and 28. |
| 21 Vict. c. 54. | *Punishment of frauds committed by Persons intrusted with property.* | The whole of the Act. |
| 21 Vict. c. 57. | *Reversionary interests of married Women in personal Estate.* | The whole of the Act. |
| 21 Vict. c. 77. | *Probates and Letters of Administration.* | Sections 2, 3, 4, 21 to 38, both inclusive; 40, 42, 45, 53 to 91, both inclusive; 94, 95, and 96. |
| 21 Vict. c. 85. | *Divorce and Matrimonial Causes.* | Sections 2, 6, 7, 13 to 26, both inclusive; 33 to 54, both inclusive; and 59, (except so far as the said sections, or any of them, relate to the dissolution of marriage). |

THE SECOND SCHEDULE TO WHICH THE ORDINANCE REFERRED.

RULES, ORDERS, AND REGULATIONS, OF THE SUPERIOR COURTS OF LAW AND EQUITY AT WESTMINSTER.

| *Date of the Rule or Order.* | *Subject matter of the Rule or Order.* | *Extent of operation intended to be hereby given to the Rule or Order.* |
|---|---|---|
| Rule of Court, Michaelmas Term 1855. | *Writs issued under the Bill of Exchange Procedure Act, 1855.* | The whole of the Rule. |
| Orders of Court of 30th November, 1855. | *Decrees and Entries.* | The whole of the Orders 1, 2, and 3. |
| Rule of Court of the 8th May, 1856. | *Service of Pleadings and Proceedings at Law.* | The whole of the Rule. |
| General Orders of the 12th November, 1856. | *Business to be disposed of at Chambers.* | The whole of the Orders. |
| The like of the 15th November, 1856. | *Leases and Sales of Settled Estates.* | The whole of the Orders. |
| General Order of the 2nd February, 1857. | *Service of Writs and Proceedings in Equity.* | The whole of the Order. |
| Rule of Court of the 23rd April, 1857. | *Notice as to Costs endorsed on Writs of Summons on Contracts under £ 20.* | The whole of the Rule. |
| General Orders of the 18th July, 1857. | *Attachment and Sequestration.* | The whole of the Order 1. |
| Regulations of the 8th August, 1857. | *Conduct of business at Chambers.* | The whole of the Regulations, except so far |

Being a matter of considerable importance, the author has obtained from, and the sanction of, the Government to publish a copy of the Secretary of State's despatch before alluded to, which, together with the report of Sir Frederic Rogers, to Mr. Herman Merivale, C.B., the permanent Under-Secretary of State for the Colonies, is now reproduced in full. The following was the despatch of the Secretary of State, Sir E. B. Lytton :— Chap. XXIV. 1858. The Secretary of State's despatch.

Downing Street, 11th June, 1858.

Sir,

I have to acknowledge the receipt of your despatch No. 35 of the 25th March last enclosing an Ordinance, No. 5 of 1858, "for extending to this Colony certain Imperial enactments and certain Rules and Orders of the Superior Courts."

I have laid this Ordinance before the Queen, and Her Majesty has been pleased to confirm and allow it. You will make known Her Majesty's decision to the inhabitants of Hongkong by a proclamation to be issued in the usual and most authentic manner. In communicating to you the above decision I desire to draw your attention to the careless manner in which some of the Imperial Acts are adopted by the Legislature of Hongkong as pointed out by the Legal Adviser to this department, a copy of whose report I enclose for your information and guidance.

I have, etc.,

(Signed) E. B. Lytton.

Governor

Sir John Bowring.

The following was Sir Frederic Rogers' report upon the Ordinance under consideration :— The report of Sir Frederic Rogers to Mr. Merivale.

Emigration Office, 2nd June, 1858.

Sir,

In obedience to the Secretary of State's directions conveyed by your letter of the 25th ultimo, I have perused and considered the undermentioned Ordinance passed by the Legislature of Hongkong in the month of March last entituled—

No. 5 "For extending to this Colony certain Imperial enactments and certain Rules and Orders of the Imperial Courts."

It may not perhaps be necessary to withhold the Royal sanction from this Ordinance. But I cannot refrain from remarking on the careless mode in which some of the Imperial Acts are adopted by the Legislature of Hongkong.

The Joint Stock Companies Act, 1856, in the sections which are adopted from it, provides (sections 41 and 47) for the proceedings of Companies which it describes as *registered* and (sections 28 and 31) *limited*. But in Hongkong as far as I am aware there is no registration of Joint Stock Companies, nor any provision for limiting their liability, and in the absence of registration the whole Act (as far as I can see) becomes nugatory. Again sections 45 and 47 and elsewhere, refer to certain proceedings to be taken under Scotch Law which, I presume, it is not intended to introduce into Hongkong. Section 57 declares that penalties shall form part of the conso-

Chap. XXIV. — 1858.

lidated fund. Section 83 provides for paying money into English Scotch or Irish Banks. Section 103 for giving notice in English, Scotch, or Irish papers. All these clauses ought either not to have been extended to Hongkong, or to have been accompanied by such an explanation as should render them applicable to the Colony.

One of the clauses adopted from the Joint Stock Companies Act, 1857, (section 28) that if any Company required to register by that Act shall fail to register before November 2nd, 1857, every Director shall be subject to a penalty of £5 per diem. This provision is applied to Hongkong, where, I believe, there is no machinery for registration, by an Ordinance passed on the 28th March, 1858, some months after the day from which the penalties run.

In the Act relating to probates reference is made to a machinery of Registrars and Deputy Registrars (sections 21-27, etc.), Commissioners of Her Majesty's Court of Probate (section 27 the County Court and its Officer (section 54 *et seq.*). It should be explained how the functions allotted to these officers are to be performed in Hongkong. No sufficient explanation is given by the enactment (section 2) that the provisions of the Imperial Act shall be so construed as to enable the provisions thereof to be executed and enforced by any Courts or officers (howsoever designated) having or exercising the same or similar or analogous functions to those of the officers designated in the Imperial Act.

Section 66 of the Imperial Act provides that there shall be one place of deposit of original wills in London or Middlesex. I presume it is not intended to apply this clause to Hongkong. It is, however, so applied in fact. Again, I do not see anything in the local Ordinance which would prevent its application to Chinese wills. It should certainly have been explained whether or not this is intended.

The principal provisions of the Divorce Act of last Session are adopted, except so far as they relate to the dissolution of marriages—a power not generally entrusted to Colonial Legislatures. I do not see that any error has been committed in extending these clauses to Hongkong, nor in respect to the Imperial Acts 19 Viet. Cap. 117 and 21 Viet. Capp. 54 and 57.

I have, etc.,

(Signed) FREDERIC ROGERS.

HERMAN MERIVALE, Esq.,
etc., etc., etc.

Disallowance of Ordinance No. 13 of 1858.

The Secretary of State's despatch after being read at a meeting of the Legislative Council held on the 4th January, 1859, was ordered to lie on the table.* One of the immediate results of the Secretary of State's action, consequent upon his despatch, was the disallowance of Ordinance No. 13 of 1858,† relating to Chinese passenger ships, passed by the local Legislature on the

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* See Chap. XXV., *infrà*.

† "An Ordinance for the continuance of the heretofore existing regulations respecting Chinese Passenger Ships; and in the case of British Ships, respecting the treatment of the passengers therein while at sea, and for making regulations in addition thereto." According to the preamble to this Ordinance, it was passed with a view "to make further provision, in addition to that made by the Chinese Passengers' Act, 1855," *i.e.*, Act 18 and 19 Viet., c. CIV., for the regulation of Chinese Passenger Ships.

21st October, 1858.* The disallowance, however, was not notified to the public until the 16th December, 1859, although, as will be seen hereafter, the matter was mooted in Council so early as in January, 1859,† in consequence of instructions from the Secretary of State. Subsequently, to meet the necessities of the case, Ordinance No. 13 of 1858 was duly modified and, as Ordinance No. 6 of 1859, passed the Legislature on the 26th December, 1859.‡

Disallowance, when notified.

Mr. Anstey now returned from Manila, and discovered that, on his suspension from office, the Governor, whilst appointing the late Mr. Day to the acting Attorney-Generalship, had appointed Dr. Bridges as counsel to the Superintendency of Trade on the full emoluments attached to that office, thereby adding another to the mistakes with which his administration abounded, having regard especially to what he had professed to be his ideas upon private practice being allowed to Government officials. Again, after his resignation of the acting Colonial Secretaryship, it will hardly be believed that Sir John Bowring allowed Dr. Bridges to retain the position now the subject of controversy between himself and Mr. Anstey, who, although under suspension, at once addressed the Secretary of State upon the subject. In his letter to Sir Bulwer Lytton, dated the 12th October, Mr. Anstey observed *inter alia* as follows upon the further anomaly of the position :—

Sir John Bowring's appointment of Dr. Bridges as counsel to the Superintendency of Trade on the suspension of Mr. Anstey.

Mr. Anstey's complaint to the Secretary of State.

"You, Sir, will perceive that, at the very time when Dr. Bridges was active in the measures for my suspension, the salary of £250 a year, part of my expected spoils, was being allotted to him, as his contingent share, although such allotment was directly forbidden by the terms of Lord Clarendon's Despatch.....on the supposed limits (to the right of the Attorney-General to advise private clients here and at the five ports) Dr. Bridges has, since his acting appointment to the office in question, acted freely for clients in appeals coming before Sir John Bowring, as such Superintendent.

"The expression, "greedy for my succession," on which so much indignant censure was passed by His Excellency and the Executive Council,§ is, I submit, fully justified by the facts now first brought to light by the death of Mr. Day, with whom the arrangement was effected."

As was to be expected, Sir John Bowring fully absolved Dr. Bridges of all blame in (what may be correctly termed) this

* As has before been recorded (*antè* Chap. XXIII., p. 517. *note*), except for short trips to Canton and Macao, Mr. Anstey's longest absence from Hongkong when holding the Attorney-Generalship was in September, 1856, when he was in Shanghai, and from 27th July to 13th December, 1857, when on leave in India. In that interval no Home legislation was introduced, so that he was mainly answerable for the Acts of Parliament to which local effect had been given from the time of his arrival in the Colony until his suspension on the 7th August, 1858.

† Chap. XXV., *infrà*.

‡ See Chap. XXV., *infrà*.

§ This expression was used by Mr. Anstey in one of his memoranda to Dr. Bridges, alluded to *antè* Chap. XXIII., p. 513, and which probably was one of the reasons which induced the latter to adopt the course he did in the Executive Council in not voting for the suspension of Mr. Anstey (*id.*, p. 514). See also § 88 of Sir John Bowring's despatch—*id.*, p. 533.

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fresh piece of jobbery. That Dr. Bridges had asked for the position on the suspension of Mr. Anstey and that he had arranged with Sir John Bowring the terms on which Mr. Day should take the temporary vacancy, there cannot be the shadow of a doubt. Could Sir John Bowring have imagined for one moment that, after all the disclosures in connexion with Dr. Bridges' conduct generally, and after what must be looked upon as a necessary, if not compulsory, resignation on his part, that the Home Government could have shown such weakness as to entertain any application for permanent employment or recommendation ever so strong on his behalf? That, however, is the only conclusion to arrive at after perusal of the Governor's despatch to the Secretary of State in vindication of Dr. Bridges' conduct. But, as has been shown, Sir John Bowring was under great obligations to Dr. Bridges "for active and valuable services,* and who, moreover, must have afforded him considerable assistance in his various communications with the Home Government, for it is impossible to peruse some of them, especially those referring more particularly to the disputes between the Executive or Dr. Bridges and Mr. Anstey, without seeing that they betray the hand of one accustomed to more than the ordinary curriculum of official documents.

Sir John Bowring's despatch.

After this additional false step on the part of Sir John Bowring, his allusion to private practice cannot be looked upon otherwise than in the light of gross irony. The following was Sir John Bowring's despatch giving cover to Mr. Anstey's letter:—

Government Offices, Victoria,
Hongkong, 16th October, 1858.

Sir,

I have the honour to forward a letter addressed to you by Mr. Chisholm Anstey on the 12th instant (received on the 13th).

I thought it desirable to communicate to Dr. Bridges the charges made against him by Mr. Anstey. I send copy of Dr. Bridges' communication to me in reply.†

Dr. Bridges is quite justified in his utter denial of the truth of Mr. Anstey's averments. They but add to a mass of unwarrantable statements with which the archives of this Colony have been encumbered by Mr. Anstey's precipitancy.

I have already stated that Dr. Bridges (with honourable and becoming forbearance) avoided taking any part or voting in the Executive Council on the question of Mr. Anstey's suspension.‡

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* See *antè* Chap. XXI., p. 476.

† Not reproduced. Dr. Bridges' letter was a mere denial 'upon his honour' of 'the truth of every statement' made by Mr. Anstey. See *Parliamentary Papers relating to Hongkong*, 1860, p. 242.

‡ Naturally enough. He was a candidate for the Attorney-Generalship (as he had been some years before—see his precipitate departure noticed *antè* Chap. XVI. § II., p. 369)—and it would have been an outrage on decency under the circumstances had he taken any *active* part or voted for Mr. Anstey's suspension. As will be recollected, Sir John Bowring, on the very day he reported Mr. Anstey's suspension to the Secretary of State, also recommended Dr. Bridges, should Mr. Anstey's suspension be confirmed—see *antè* Chap. XXIII., p. 516.

No case is within my knowledge, and I believe none exists, where Dr. Bridges having accepted a fee as the professional adviser of a litigant party in cases of appeal, has been called upon by me to give advice under such appeals. I have applied the rule strictly, both to Mr. Anstey and Dr. Bridges, and have refused to consult either in cases in which they have been employed professionally.

With respect to the "division of the spoils" neither Mr. Day nor Dr. Bridges had any knowledge of my purposes. I nominated Dr. Bridges, pending the approval of Her Majesty's Government, to the position he had formerly occupied and creditably filled, that of Counsel to the Superintendency, and mentioned to Mr. Day my intention of doing so. Mr. Day was thoroughly satisfied with the arrangement, but was not consulted upon it.

All these discussions will, I hope, prove to Her Majesty's Government the desirableness of disallowing private professional practice to the Attorney-General, and of augmenting his salary in consequence to £1,500 a year from the Colony, and £250 from the diplomatic service. The jealousies and bickerings created by the existing state of things are prejudicial to the Queen's service, and I fear are an inevitable consequence of the clashings of public interests and private emoluments.*

I have, etc.,

(Signed) JOHN BOWRING.

To

The Right Honourable Sir EDWARD B. LYTTON, Bart., M.P.

Mr. Anstey and Dr. Bridges resume their old conflict.

On the other hand, it was certainly detrimental to the public good to find that Mr. Anstey and Dr. Bridges, the former suspended and the latter now out of the service, never to be employed again as will hereafter be seen, though still an aspirant to the Attorney-Generalship, seemed bent on resuming their old conflict whenever an opportunity showed itself. Though suspended from his public functions, Mr. Anstey continued his private practice, and on his return from Manila, as before stated, he set actively to work again, although in bad health.

An unpleasant scene in the Supreme Court.

An unpleasant scene took place in the Supreme Court on the 19th October, between him and Dr. Bridges, when both were engaged in the matter of a Mr. W. M. Robinet, an insolvent, when Mr. Anstey charged Dr. Bridges with 'fraud' and 'sharp legal practice,' though apparently there were no grounds for doing so, and on appeal to the Chief Justice by Dr. Bridges, the former condemned Mr. Anstey's remarks as uncalled for and improper. There had been already quite enough of these conflicts in Hongkong and the public were beginning to get quite tired of them. On the case being resumed on the 29th October, Mr. Anstey called the attention of the Chief Justice to what he described as an "infamous, mendacious, libellous, and degraded misreport" of what had taken place in the Court at its previous hearing of this matter as given in *The China Mail*. He qualified it a contempt of Court,

* See previous references to this subject, *antè* Chap. XXI., p. 476; also Chap. XXIII.,

Chap. XXIV. 1858.

and appealed to the Chief Justice for an expression of opinion, but the Chief Justice paid no attention to Mr. Anstey's remarks. Doubtless silence had come to be looked upon as golden by Mr. Hulme, whose advanced age and infirmities, besides a natural unwillingness to be mixed up in local squabbles from which he had all along wisely kept aloof, were now but too apparent.

The Chief Justice's attitude.

Mr. Anstey on Dr. Bridges.

Mr. Anstey then alluded to a postponement of the case on the previous sitting of the Court through his illness and which, he alleged, Dr. Bridges had "so much paraded through the press as a concession of his." "I owe him no thanks," said Mr. Anstey, "for his so-called concession," and, breaking out into poetry, continued :—

He breaks out in poetry.

"It reminds me of Matthew Prior's case—

'To John I owed some obligation—
But John unluckily thought fit
To publish it to all the nation :
So John and I are more than quit !'"

The case then continued after some observations by Dr. Bridges, who said he only wanted a statement of simple facts.

Dr. Bridges' gorgeous signboards.

But this preliminary wrangling was not to end here. On resuming active private practice, Dr. Bridges had put up two gorgeous signboards at the entrance to his office in Queen's Road, the upper one with large Roman letters "W. T. Bridges, D.C.L., Practitioner in Law," hanging horizontally over another with Chinese characters setting out his qualifications, the letters and characters being brightly gilt on a black lacquer. This signboard naturally was made the subject of derisive remarks in the local press, and treated as a curiosity, one local paper, in a sarcastic article dealing with the impropriety of the step, reproducing the facsimile of the boards in its columns and calling the attention of *The Illustrated London News* to it.* Having regard to professional etiquette, a matter strongly discussed in the early days,† before the amalgamation of the two professions,‡ it may not be inappropriate to reproduce here the article alluded to together with the fac-simile of the signboards in question :—

"Dr. Bridges's signboard in the Queen's Road is such a curiosity in its way, that, our readers will agree with us, it is deserving more than the few words devoted to a notice of it in our last issue.§ There are two boards—an upper one, with large Roman letters, hanging horizontally over another with Chinese characters. These boards are neat, if, indeed, they may not be called gaudy—the letters and characters being brightly gilt on a black lacquer. We may be wrong in saying the ground is black—it may be *green*, but it is very dark green, and quite illumined with the *yellow* hue of the

* See *The Friend of China*, 27th October, 1858.
† See *antè* Chap. XVI. § II., pp. 371-373.
‡ *Antè* Chap. XXII., pp. 480-494.
§ See *The Friend of China*, 23rd October, 1858.

gold. The horizontal board is about a foot and a half long by one deep or broad—solidly constructed. The perpendicularly hung board is upwards of three feet long, and, say, a foot wide. These are the inscriptions :— Chap. XXIV. 1858.

W. T. BRIDGES,
D. C. L.,
PRACTITIONER IN LAW.

| | | | |
|---|---|---|---|
| 狀 | Chong | 英 | Eng |
| 師 | Sze | 國 | Kwok |
| 權 | Keun | 進 | Chun |
| 理 | Lhe | 士 | Tsze |
| 各 | Kok | 未 | Me |
| 衙 | Gna | 士 | Sze |
| 大 | Tai | 必 | Be |
| 小 | Siu | 列 | Le |
| 案 | Oan | 者 | Jhe |
| 情 | Ching | 士 | Sze |

For the information of *ignorami*, we have furnished, with the characters, the pronunciation in the local dialect. The literal rendering of these characters is very curious. *Eng* is the term for England or English. As a rule it is written *Tai-Eng*—Great England. *Kwok* is country or nation. Chun-tsze signifies Literary graduate of the third degree. In the opinion of the sinologue who furnished these characters, *Chun-tsze* appears to have been considered equivalent to Doctor of Civil Law—*Me-sze* is the nearest approach in Chinese to the sound for Mister, for which it is intended. In this instance the characters seem superfluous,—reading with as much propriety as would Doctor Bridges, Esq.—*Be le jhe sze* approximates to Bridges—*Chong-sze* is lawyer.

Only professors of the language, *natives*, can conceive the peculiar floweriness of the four next characters. In their crudity, they stand as—*Keun*,

*Note.*—The Chinese mode of reading is from right to left, therefore the first syllable to commence reading in the above board is that on the top of the second column 'Eng,' proceeding to the bottom then reading anew from the top of the (or what would be our) first column from 'Chong' downwards.

Chap. XXIV. — 1858.

power or authority—*Lhe*, to guard or take care—*Kok*, every—*Gna*, Court—Chinese, we apprehend, will understand the characters to imply—"The graduate authorized to transact business in law Courts."

*Tai* is great—*Siu* is small—*Oan* cases—*Ching* circumstances; readable by natives as—"whatever the circumstances of cases—be they large or small in magnitude—clean or dirty—this literary graduate of the third degree is the English Mister who can manage them properly;"—or in Ethiopian minstrel's vernacular it might be—"*Dis ere* Chile can put em right trew." There—that is Dr. Bridges's signboard; and if *The Illustrated London News*' artist does not send home a special picture of it, the English public will not be treated with the attention they deserve. Such an emblem, in connexion with civil law, was never exhibited in any British city before, and we have much pleasure in embalming the memory of it. For the information of the curious, and as an exhibition of our public spirit, we have to state that we engaged a teacher for the special business of furnishing the *very perfect* translation here given."

Professional etiquette.

'Clean or dirty,' in reference to Dr. Bridges, who took no notice of this press attack, may have been considered sufficiently significant, but, as was to be expected, the signboards were looked upon as an advertizement and in that light adversely commented upon, nor did it, of course, escape Mr. Anstey's acute eye or sense of humour. Being so strong upon professional etiquette, he naturally took advantage of it to make an attack upon Dr. Bridges when the latter again appeared in Court on the 2nd November in the *Robinet* bankruptcy case before mentioned.* On the case being resumed on that day, Mr. Anstey asked for the production of a certain letter which was in Dr. Bridges' possession, when the following conversation took place:—

Mr. Anstey and Dr. Bridges in Court again.

'Legal practitioners who swing Chinese signboards upon the public road.'

*The Court* (to Dr. Bridges)—You will get that letter.

*Dr. Bridges*—Let him wait. When I go to my chambers, I'll get it and then produce it.

*Mr. Anstey*—Yes, when the Court has risen. I say this is not the practice of the Courts in England!

Then, alluding to the famous signboard, Mr. Anstey exclaimed:—

"But what can be expected from people calling themselves legal practitioners *who swing Chinese signboards upon the public road?* This is not the practice of the bar at Home!"

But the scene was not to end here—neither the Chief Justice nor Dr. Bridges, of course, had paid the slightest attention to Mr. Anstey's remarks regarding the signboards. Mr. Anstey proceeded to challenge the truth of the insolvent's schedule and questioned him as to his having falsely represented himself as being the subject of various nations, when the insolvent retorted—

"That is a lie, Sir."

After a pause—

*Mr. Anstey to the Court*—"It does not move me, my Lord"—(then trying to get the Court to interfere)—"Your Lordship has heard the insolvent's answer?"

* *Antè* p. 549.

*The Court*—"That is a very improper answer."



The decorous behaviour of the Chief Justice.

And doubtless it was, but the Chief Justice evidently considered he had said quite enough without paying more attention to these questionable digressions, and, according to the report, the matter proceeded without further interruption. The records show nothing further in reference to Dr. Bridges' signboards, but it is not to be presumed that he removed them, though the supposition is, that they must have met with the scorn they deserved, especially after their publication by the press.

However scandalous such disputes in Court as those described between Mr. Anstey and Dr. Bridges must have been, the reserved and decorous demeanour of the Chief Justice on the other hand stands forth in marked contrast with the disgraceful scenes enacted in this very Court in 1880 between Chief Justice Smale and Mr. Gibbons, the Registrar, when the community, apparently taking pleasure at the frequent and uncalled-for disputes between these two Court officials, assembled in large numbers in the Court House to witness them.*

Execution of a private of the Royal Marines on board H.M.S. *Hesper* for murder.

On the 5th November, a Court-martial assembled on H.M.S. *Calcutta* for the trial of James Kain, Private of the Royal Marines, for the murder of Mr. William Sage, assistant engineer of H. M. S. *Hesper*. He was found guilty and sentenced to death. The Commander-in-Chief, Admiral Sir M. Seymour, having approved of the sentence, the execution took place on the morning of the 10th November at half past six, when the crews of all the ships of war in harbour were mustered and the articles of war read to them; after which the parties ordered on duty embarked in the *Niger*, *Coromandel*, *Haughty*, and *Firm*, and passed outside the shipping towards the Lyeemun, where the *Hesper* was at anchor. At five minutes to eight, the crews of the various ships manned the rigging; and precisely at eight, on a signal gun being fired from the *Hesper*, the miserable wretch was run up to the starboard fore-yard-arm with a jerk, says the report, that turned his body right over, so that death was instantaneous. After hanging for half an hour, the corpse was lowered into a boat and sent on shore. The civil authorities had not been put into requisition in this case.

A subsequent case in which a soldier who murdered a comrade was handed over to the civil authorities.

The military authorities, however, in February, 1861, in a similar case where a soldier murdered a comrade, handed the prisoner over to the civil authorities for trial.†

The Governor received further instructions on the 13th November to despatch sixty more‡ Chinese convicts to Labuan, and

* See Vol. II., Chap. LXXII.
† See Vol. II., Chap. XXXII.
‡ See *antè* Chap. XIX., p. 440.

Chap. XXIV. amongst the batch despatched early in December was Ma Chow Wong, the now famous pirate-informer, so often before alluded to. How much Mr. Caldwell, "who had been for years the steady supporter of Ma Chow Wong,"* must have grieved over this deportation, those who have now been made familiar with the disclosures in the 'Caldwell Inquiry,'† and of Mr. Caldwell's exertions to obtain his release after his conviction in September, 1857,‡ may well imagine. Sir Hercules Robinson, the Governor, in alluding to this notorious offender in a despatch to the Duke of Newcastle, dated the 31st December, 1861, further bears out his character even after banishment in the following passage :—

1858.

Ma Chow Wong and other convicts despatched to Labuan.

Mr. Caldwell's grief.

Ma Chow Wong in Labuan.

Conspiracy to murder.

His sentence increased.

> "Since Ma Chow Wong's removal to Labuan, to which Colony he was sent in penal servitude, his sentence has been increased by five years, as he was proved to have organized a conspiracy for the murder of every European in the Settlement and the liberation of all the convicts. Fortunately, the plot was discovered the day before that fixed for carrying it into effect by the confession of one of the convicts who could not reconcile himself to such indiscriminate slaughter."

The free pardon subsequently granted him.

From inquiries made by the author, it would appear that through the good offices of Mr. J. R. Howard, Superintendent of Convicts at Labuan, and of Mr. Pope Hennessy, when Governor of that Colony, Ma Chow Wong obtained a free pardon in 1869, when he returned to Hongkong. On his arrival, he was arrested by the Police and brought before the Magistrate, but producing his free pardon he was afterwards released. Shortly after, Ma Chow Wong proceeded to Canton and, during his stay there, the Chinese Colonel Tang offered him a fifth rank 'mandarin button,' and an appointment in the military service at Canton, but Ma Chow Wong declined both honours and preferred ending his days peaceably in Hongkong under the British flag, which had shown him so much consideration.

Again during the Franco-China hostilities in 1884-1885, Ma Chow Wong was offered military office by the Chinese, which he declined. During his stay in Hongkong, Ma Chow Wong, who was now elderly and quite reformed and, moreover, had apparently lost all influence amongst his own people, led a quiet life without having any occupation, dying, according to accounts, in the Colony as late as in 1892, at the age of seventy, leaving him surviving a son named Wong Cheong with whom he had lived, and who is still alive at this date.

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* See 'Finding in Mr. May's case,' Vol. II., Ch. XXXV.
† *Antè* Chap. XXIII.
‡ *Antè* Chap. XIX., pp. 444-447.

# CHAPTER XXV.

## 1858-1859.

### SECTION I.

### 1858.

Mr. Tarrant prosecuted for libelling the Government.—Act 6 and 7 Vict. c. 96.—'A contemptible, dammable trick.'—Mr. Anstey's previous advice to the Government.—Colonel Caine as one of the advisers of the Government.—At the preliminary inquiry Mr. Anstey appears on behalf of Mr. Tarrant.—Mr. Day's report to the Government.—At the trial Mr. Anstey appears against the Crown.—The anxiety of the Government.—The disclosures.—The relations between Dr. Bridges and Mr. Caldwell.—The defendant pleads justification.—The case for the Government.—Mr. Anstey is stopped by the Jury who unanimously return a verdict of not guilty.—Costs against the Crown.—Payment of fees to jurymen.—Result of case damaging to Mr. Caldwell.—Mr. Green's opinion on the case.—Mr. Anstey's hands strengthened.—The troubles of the Government increased. Sir John Bowring takes leave on Mr. Mercer's return.—Colonel Caine, Lieutenant-Governor, administers the Government.—Mr. G. W. Caine in charge of Superintendency of Trade.—Sir John Bowring leaves for Manila.—He reports Mr. Anstey for taking retainers against the Crown.—The unofficial members of the Legislative Council protest against the appointment of Mr. Rennie, Auditor-General, to the Council.—The pork butchers and Mr. Caldwell as prosecutor in an alleged unlawful assembly case.—The defendants, defended by Dr. Bridges and Mr. Anstey, are discharged.—Mr. Anstey's application that Mr. Caldwell be fined for malicious arrest.—On Mr. Anstey leaving the Court, Mr. Caldwell takes the Bench as a Justice of the Peace.—Action for damages against Mr. Caldwell.—Application for rule nisi to quash the action dismissed.—The result.—Prosecution and trial of Mr. Wilson, editor of *The China Mail*, for libelling Mr. Anstey.—The facts.—Verdict, for the Crown.—The sentence and apology.—Colonel Haythorne, member of the Executive Council.—Murrow *v.* Sir John Bowring. Action for assault and false imprisonment.—Mr. Anstey, counsel for plaintiff.—The plaintiff's case.—Acting Attorney-General submits no case to go to Jury.—Verdict for the defendant. New trial refused.—Mr. Anstey's determination 'to work the destruction of Sir John Bowring's corrupt and wicked administration.'—The year 1858 a memorable one in the dark pages of Hongkong's history.—A suspended Attorney-General seeking the punishment of the Governor.—Prosecution of deadly feuds between officials and others.

### SECTION II.

### 1859.

Mr. Davies, Chief Magistrate, moves in Legislative Council for production of correspondence relative to Opium Farm privilege and Dr. Bridges.—Protest of Mr. Davies against the refusal of Government.—Secretary of State's refusal to confirm two Ordinances without alteration.—Ordinance No. 8 of 1858.—Ordinance No. 1 of 1859.—Ordinance No. 10 of 1858.—Ordinance No. 2 of 1859.—Statement of the Governor on the instructions to the Attorney-General "to keep pace with the progress of the times" relative to the introduction of Acts of Parliament.—Ordinance No. 5 of 1858.—Sir John Bowring asks the Council to repeal the Ordinance in accordance with instructions from Secretary of State.—Ordinance No. 13 of 1858.—Imperial enactments inapplicable to the circumstances of the Colony.—The Governor as to the steps he had taken.—The acting Attorney-General's suggestion that the matter stand over until the Attorney-Generalship be permanently filled.—The Chief Justice's approval of the course suggested and the 'superfluous piece of legislation.'—The Governor as to such subjects being left to the law officers.—Mr. Davies, Chief Magistrate, and the 'unmerited slur' cast upon Mr. Anstey.—The Governor's reply.—Mr. Davies' defence on behalf of an 'absent member.'—Comments upon Mr. Davies' action.—His anxiety to defend his friend, Mr. Anstey.—Departure of Mr. Anstey for England.—Ordinance No. 5 of 1858, when repealed.—Ordinance No. 5 of 1860.—The 'distinct legislative measures.'—Ordinance No. 5 of 1860.—Ordinance No. 7 of 1860.—Ordinance No. 5 of 1858.—Ordinance No. 13 of 1858.—Ordinance No. 6 of 1859.

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Mr. Tarrant prosecuted for libelling the Government.

THE charge, before alluded to, against Mr. Tarrant, the editor of *The Friend of China*, for commenting unfavourably upon the decision of the Caldwell Inquiry Commission* now came on for hearing. Mr. Tarrant was indicted criminally on the 18th November for having, in his issue of the 28th July, published a libel against the Government in connexion with the above matter, under the Act 6 and 7 Vict. c. 96 (entitled "An Act to amend the Law respecting Defamatory Words and Libel), by stating that "the principal charge (meaning the charge against the said Daniel Richard Caldwell) broke down through a contemptible, damnable trick on the part of the Government."

Act 6 and 7 Vict. c. 96.

'A contemptible, damnable trick.'

Mr. Anstey's previous advice to the Government.

Before entering into the facts of this case it is necessary to state that on the 2nd August, before his suspension from office, Mr. Anstey had been consulted by the Government upon the article which had appeared in the paper in question, and while holding that it was 'libellous' and "that the true course of proceeding, Sir John Bowring not being personally named, would be for Dr. Bridges (acting Colonial Secretary) to swear an information on oath at the Police Court," he took care, however, to add in the most emphatic manner "that in the face of Dr. Bridges' evidence before the Caldwell Inquiry Commission, he could not advise His Excellency to commence any proceedings whatever in this case, *being quite certain that any jury would return a verdict against the Crown upon such evidence being laid before them by the defendant.*" Notwithstanding this advice, Sir John Bowring, 'better advised' apparently, determined to proceed against Mr. Tarrant.

At the preliminary inquiry Mr. Anstey appears on behalf of Mr. Tarrant.

At the preliminary inquiry Mr. Anstey, now under suspension, appeared for the defendant. The Government could hardly believe its own eyes, and set moving about to find out the true facts of the case. Mr. Cooper Turner, the Crown Solicitor, was put in motion to make inquiries and the Executive found itself, as the Americans would say, in a fix. Mr. Day, the late acting Attorney-General, was sent to the Police Court to find out the real position of things, and there, true enough, to his amazement, he found Mr. Anstey in the full discharge of his duty as advocate for Mr. Tarrant. The next day he wrote to the Government communicating the fact to the Executive. How far Mr. Day was correct in his facts in the letter hereinafter reproduced, as to the part taken by Mr. Anstey in the institution of the prosecution before his suspension, the reader may well judge for himself, from Mr. Anstey's written opinion given above, not losing sight, however, of the fact, that quite apart from Dr. Bridges who had been a moving, if not *the* moving, spirit

* See *antè* Chap. XXIII., p. 511, and references there given.

in the matter, Mr. Day, who was a friend of Dr. Bridges, now betrayed his own anxiety as to the ultimate result of this rash proceeding, the consequences of which would undoubtedly reflect upon the Government of the Colony.



Colonel Caine as one of the advisers of the Government.

Nor was Colonel Caine to be left out of this matter, as one of the advisers of the Government. He had, so far, cautiously kept aloof from Mr. Anstey as far as he could, avoiding sitting on any Committee except where compelled to do so, as on the occasion of Mr. Anstey's suspension by the Executive Council, when he had been specially requisitioned by the Governor.* Carrying therefore into execution his determination not to sit upon any Committee to avoid 'disturbing the ashes of the dead' probably, having regard to his own conduct, if not sad past experience, in reference to the respected Chief Justice Hulme and Sir John Davis† and the repeated and constant attacks upon himself by Mr. Tarrant in relation to his compradore,‡ Colonel Caine, it will be recollected, left the Legislative Council when the important question respecting the amalgamation of the legal profession was being seriously discussed and a Committee was about to be formed, on the plea of indisposition.§ Again, when the Committee of Inquiry into the Bridges opium monopoly question was about to be formed he stated his unwillingness to form part of the Committee,‖ "because," according to Sir John Bowring,¶ "he entertained a strong feeling of friendship for him," and his relations with Mr. Caldwell were none the less cordial, inasmuch as the latter was a *protégé* of his and had been introduced into the service by him ;** he accordingly for the same reasons as before avoided having anything to do with the Caldwell Inquiry Commission, although his abstention did not, however indiscreetly, escape Mr. Anstey's criticism at the time.***

With regard to Mr. Tarrant and Colonel Caine and his compradore, alluded to above, it may be mentioned that Mr. Tarrant never ceased recurring to the subject of his old complaint in regard to Colonel Caine. No new official from a Governor downwards ever set foot in Hongkong without being made fully acquainted with Mr. Tarrant's past grievances, either by direct petition to the new Governor or through his paper, *The Friend of China*. These grievances Mr. Tarrant ventilated when-

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* *Antè* Chap. XXIII., p. 531 § 77.
† See *antè* Chap. VII., p. 141, and Chap. VIII. § I., pp. 158, 159.
‡ *Antè* Chap. VII., pp. 143, 150; Chap. VIII. § I., p. 170, and subsequent references.
§ *Antè* Chap. XXII., p. 489.
‖ *Antè* Chap. XXI., pp. 472, 473.

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ever occasion offered under the cognomen of Colonel Caine's "compradore" or "compradoric methods," or "system," or varied sometimes to "mandarin style of squeezing," and it is therefore a matter for wonderment that, in the midst of such an *entourage* and knowing things as he undoubtedly did, Sir John Bowring could have allowed himself to be influenced instead of acting at once on his own unbiased mind.

Mr. Day's report to the Government.

The following was the late Mr. Day's letter alluded to above :—

Attorney-General's Office,
Hongkong, 4th September, 1858.

Sir,

Having been yesterday informed by the Crown Solicitor that Mr. Anstey had been retained by and was about to appear at the Police Court in defence of Mr. William Tarrant, in the prosecution against him for a libel on the Government, I went in person, to the Magistracy, that I might be satisfied how far the information could be relied on, and there saw Mr. Anstey in the active discharge of his duty as advocate for the defendant.

I deem it to be my duty to bring this matter to the notice of the Executive.

It will be borne in mind that Mr. Anstey, in his capacity of Attorney-General, was consulted on the subject of the very article in *The Friend of China* in respect of which this prosecution has been instituted, and, in fact, was instituted during his own tenure of office, and that he at once pronounced it libellous. Further, that Mr. Anstey has been already called and examined as a witness on the part of the defendant; and in the course of his evidence stated that the language of that article was in effect but a paraphrase of his own words, previously uttered; and lastly, that he, who, when so giving his evidence, openly claimed and asserted himself to be still Her Majesty's Attorney-General in this Colony, now appears in opposition to the Crown, as the retained and paid advocate of the admitted author of the article he had himself pronounced a libel on the Government, in the case of a prosecution for libel, founded on that very article.

I have, etc.,

(Signed) JOHN DAY.

The Honourable FREDERICK FORTH, Esq.,
*Provisional Colonial Secretary.*

At the trial Mr. Anstey appears against the Crown.

As stated, the case against Mr. Tarrant came on for hearing in the Supreme Court on the 18th November, when Mr. F. W. Green, the acting Attorney-General, prosecuted on behalf of the Crown, being instructed by Mr. Cooper Turner, the Crown Solicitor, while Mr. Anstey, still holding himself to be the Attorney-General of the Colony, although under suspension,

he now saw his chance to further expose that "wicked and corrupt administration," the destruction of which he had "sworn to work."* He was instructed by Mr. H. J. Tarrant, attorney, and a brother of the defendant.



The anxiety of the Government.

The Government, in its anxiety, had been fidgety about the Jury. A special Jury had been applied for and granted, and it was not until a series of irregularities had been committed and *three* lists had been drawn, that the authorities seemed satisfied. The special Jury was composed of some of the most influential residents in the Colony, and it does not appear that the right of challenge was exercised by either side, the following jurymen being accordingly sworn in :—

Patrick Campbell, Esq., Manager of the Oriental Bank Corporation (British); John Costerton, Esq., Manager of the Incorporated Mercantile Bank of India, London, and China (British); N. M. Beckwith, Esq., of the firm of Russell & Co. (American); Francis Chomley, Esq., of the firm of Dent & Co. (British); Francis Parker, Esq., of the firm of Augustine Heard & Co. (American); Philip Cohen, Esq., of the firm of Phillips, Moore, & Co. (British); Albert Vaucher, Esq., of the firm of Vaucher & Co. (Swiss).

A murrain then seized nearly all the Government officials whose evidence was required. The certificate of illness of one of them was actually handed in by the Colonial Surgeon, Dr. Chaldecott, the 'sick man' being in Court at the time, and hearing it read! The Colonial Surgeon, under the circumstances, did not escape Mr. Anstey's critical eye and especially in regard to the alleged illness of Sir John Bowring, who had been subpœnaed as a witness for the defence, and who was said to be unable to attend for some days.

The disclosures.

There seemed also a determination to withhold official records and other evidence on the pretext of official correspondence. However, after preliminary objections to the information and amendments, the case proceeded. From a report of the proceedings, from the short-hand notes taken for the Crown by Mr. Weatherhead, the acting Deputy Registrar, a state of affairs is disclosed as hardly credible to have been possible in a British Colony. Quite apart from Sir John Bowring, the Governor, who seems to have been the complete tool of Dr. Bridges, the records disclose relations between Dr. Bridges and Mr. Caldwell, showing the two to have been on the most intimate terms, unworthy of a man holding the important position Dr. Bridges did in the Colony. The latter in his evidence admitted *inter alia* that Mr. Caldwell had "occasionally recommended Chinese

The relations between Dr. Bridges and Mr. Caldwell.

* See his evidence before the Police Court in the case against Mr. Wilson, on the nominal prosecution of the Crown, for libelling him—Mr. Anstey—*infrà*, p. 566, *note*.

Ch. XXV § I. 1858. clients to him," and also that, after seeing Mr. Caldwell, he had directed Mr. Inglis, the Governor of the Gaol, not to cut off Ma Chow Wong's tail after his conviction.* No wonder therefore that Dr. Bridges had stood forth as Mr. Caldwell's most determined champion and supporter.†

The defendant pleads justification.

The defendant pleaded justification.

The case for the Government.

The Government called three witnesses, the ex-acting Colonial Secretary, Dr. Bridges, the Assistant Chinese Secretary, Mr. Mongan, and the Surveyor-General, Mr. Cleverly, and the evidence condensed was as follows. First, the question turned upon the destruction of certain papers, and the loss of an important memorandum by Mr. May, the Superintendent of Police, which memorandum that functionary alleged he had given to the acting Colonial Secretary, Dr. Bridges. The Government therefore had by the means of these three witnesses to prove its integrity as to these missing papers, inasmuch as the libel alleged that their production would have implicated Mr. Caldwell, the Registrar-General, with the notorious pirate Ma Chow Wong, and that the loss and destruction of these papers was a premeditated act for the purpose of screening him.

Dr. Bridges proved that Ma Chow Wong was a notorious pirate and had been a bad character for years; that Mr. Caldwell's alleged intimacy with him was equally notorious; that Mr. Caldwell had made strong efforts to obtain the pirate's pardon, but had been foiled by the production before the Executive Council of certain papers found on a pirate named Beaver, as also by the production of Mr. May's memorandum taken from the papers seized in the 'hong' of Ma Chow Wong; that sundry items in this memorandum did implicate Mr. Caldwell; that Mr. Caldwell was accordingly directed to examine the papers themselves and compare them with Mr. May's memorandum; that Mr. Mongan, the Assistant Chinese Secretary, was appointed to assist him; that Mr. Caldwell reported that the papers did not implicate him at all; that consequently he (Dr. Bridges) had ordered them to be burnt. He denied all knowledge as to what had become of Mr. May's memorandum, although he admitted it had passed through his hands. He admitted that, notwithstanding the finding of the Caldwell Commission, his notorious connexion with the pirate, and all the reports of the various departments, Mr Caldwell had not been called to account by Government because "he had done nothing wrong to be called to account for."

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* See *antè* Chap. XIX., p. 447.

† In reference to this open confession, the words 'from some other cause,' in paragraph 22 of Sir John Bowring's despatch appear significant—see *antè* Chap. XXIII., p. 520.

Mr. Mongan, the Assistant Chinese Secretary, proved the tampering with the papers, the motive being the removal of evidences of guilt against Ma Chow Wong whose release it was Mr. Caldwell's object to effect; that he had applied to the Governor as to what was to be done with the papers, and that the Governor referred him to Dr. Bridges "*who had told him to burn them.*"

Mr. C. St.-G. Cleverly, the Surveyor-General, spoke as to the burnt papers, and said that, during the investigation, evidence had been rejected which should have been taken; that Mr. Caldwell used to interrupt and make gestures to the witnesses deposing against him, which he as chairman had stopped; and that Dr. Bridges had openly declared before the Commission "that he had felt himself bound as a brother-freemason to stand by Mr. Caldwell,—a statement suppressed in the minutes"!

This closed the evidence for the Crown.

Mr. Anstey is stopped by the Jury who unanimously return a verdict of not guilty.

Costs against the Crown.

As Mr. Anstey was about to begin on behalf of the defendant, the Jury stopped him, and, after a short consultation, they intimated to the Registrar that they had arrived at the opinion that Government had not proved its case, and therefore there was no necessity to expend more time in listening to the defence, —in other words, the defendant was not guilty of the misdemeanour with which he was charged. The foreman, then addressing the Chief Justice, said:—

"My Lord, we have made up our minds—not guilty is our unanimous verdict."

The following is also from the official report of the case:—

"*Mr. Anstey*, addressing the Jury: Gentlemen of the Jury, let me understand you. The defendant by his plea of not guilty not only traversed the entire information, but he also pleaded in justification of the libel, certain facts, viz., that the Government libelled was not the Queen's lawful Government, but the 'accroached and usurped' Government of one Dr. Bridges:—That the libellous matter was true, and that the publication thereof was for the common good. Is the Court to understand then, that you find for the defendant on both these issues?—*Foreman.* Yes.

*Mr. Anstey.* My Lord, then I apply for costs on both pleas. By section 8, chapter 96, Act 6 & 7 Victoria—

'If judgment shall be given for the defendant, he shall be entitled to recover from the prosecutor the costs sustained by the said defendant by reason of such indictment or information, and that upon a special plea of justification to such indictment or information, if the issue be found for the prosecutor, he shall be entitled to recover from the defendant the costs sustained by the prosecutor by reason of such plea, such costs so to be recovered by

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the defendant or prosecutor respectively to be taxed by the proper officer of the Court before which the said indictment or information is tried.'

*The Court*—And payable by the Crown?

*Mr. Anstey*—Yes, my Lord. By section 3 of Ordinance 4 of 1857, which runs 'In all proceedings where costs would have been recoverable by or from private parties, they shall be recoverable by or from the Crown.'

*The Court*—Then you shall have them.

*Registrar*—(After paying them ten dollars each), Gentlemen of the Jury, you are discharged."

Payment of fees to jurymen.

The above report discloses as may also be seen, the immediate payment to jurymen of their fees by the losing side.

Result of case damaging to Mr. Caldwell.

And so ended this unprecedented and disgraceful scene, which so clearly disclosed the false step of the Government—a step so damaging to itself in reference to the charges against Mr. Caldwell which had led to Mr. Anstey's suspension, and for denouncing which the defendant was prosecuted, but for which the Government now stood morally convicted by the unanimous verdict of a special jury.

Mr. Green's opinion on the case.

Writing from "Stanley Street," on the 25th November, Mr. Green, the acting Attorney-General, submitted his report to the Government of the conclusion of the trial of Mr. Tarrant. In it he distinctly stated that "*the imputation against Dr. Bridges must have been regarded by the Jury as proved*," and that "the prosecution of the case should never have been commenced under his advice"—thereby falling in with Mr. Anstey's views as originally submitted to the Government. Mr. Green further added, in extenuation of his position that the case commenced while Mr. Anstey was discharging his functions as Attorney-General, continued by Mr. Day, as his provisional *locum tenens*, it had been concluded by himself under considerable disadvantages."

Mr. Anstey's hands strengthened.

With these facts before one, could Mr. Caldwell remain any longer in the service in the honourable position of Protector of Chinese, Registrar-General, or Justice of the Peace, after the exposures made in this case alone, and would not the result now strengthen the hands of Mr. Anstey? These were questions which the Government was now called upon to face, and at all events it had now but weakened its hands and increased its troubles.

The troubles of the Government increased.

Sir John Bowring, who had been suffering for some time past from serious illness, aggravated by domestic calamities

and furious local squabbles partly brought on by his own weakness as an administrator, took advantage of Mr. Mercer's return to duty on the 24th November to take short leave of absence.

Sir John Bowring takes leave on Mr. Mercer's return.

As will be recollected, Mr. Mercer had proceeded on leave so long ago as on the 14th February, 1857, and had therefore been nearly two years away. How much he also was responsible for the condition of affairs in the Colony, through his recommendation to the Governor of his 'Oxford' friend, Dr. Bridges, for the acting Colonial Secretaryship, an arrangement strongly objected to at the time,* the reader may judge for himself.

Colonel Caine, Lieutenant-Governor, administers the Government.

Mr. G. W. Caine in charge of Superintendency of Trade.

On the 27th appeared Government Notifications that the Lieutenant-Governor, Colonel Caine, would administer the Government during the Governor's absence, and that all communications with the Superintendency of Trade should be addressed to Mr. George Whittingham Caine, officiating Secretary to the Plenipotentiary, "who would be left in charge of the current business of the office"—an important step already for Colonel Caine's son before referred to in this work† and in regard to whom more particulars will appear hereafter.‡

Before his departure for Manila, however, Sir John Bowring reported the result of the case against Mr. Tarrant to the Home Government. Having been a staunch and blind supporter of Dr. Bridges throughout, and as in the case of the Caldwell Commission and its conclusions as regards Mr. Caldwell,§ or of the Justices of the Peace who had decided *ex proprio motu* that Mr. Caldwell was unfit to remain in the Commission of the Peace,‖ naturally enough Sir John Bowring could not now either agree with the conclusions of Mr. Green, the acting Attorney-General, who had conducted the prosecution or less so of the Jury, and it goes without saying that opportunity was again taken of making Mr. Anstey the scape-goat and, therefore, the subject of attack. This is what Sir John Bowring wrote to the Secretary of State :—

Government Offices, Victoria,
Hongkong, 27th November, 1858.

Sir,

The case of Regina *v.* Tarrant has already been referred to by me in Despatch No. 116, of 30th August last.

I have now the honour to enclose the acting Attorney-General's report of the trial and verdict.

I deeply regret that my exhausted state prevents my giving reasons for not concurring in some of the conclusions at which the acting Attorney-

* *Antè* Chap. XVIII., p. 425.

† *Antè* Chap. XX. § II., p. 467, and reference there given.

‡ See Vol. II., Chap. LIX.

§ See paragraphs 40 and 65 of Sir John Bowring's despatch, *antè* Chap. XXIII., pp. 523, 529.

‖ *Antè* Chap. XXIII., p. 502, and paragraph 75 of his despatch, *id.*, p. 531.

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General has arrived. I think the jury's decision a very extraordinary one,* and was much surprised at the enormous mass of irrelevant and vituperative matter which Mr. Anstey was permitted unchecked to introduce; but as I desired a short-hand writer to be employed to take notes of the proceedings, those notes will be forwarded to you by the next mail.

I have, etc.,

(Signed) JOHN BOWRING.

To

The Right Honourable Sir EDWARD B. LYTTON, Bart., M.P.

Sir John Bowring leaves for Manila.

Sir John Bowring took his departure for Manila in H.M.S. *Magicienne* on the 29th November, visiting various places during his stay there, including Borneo, and returning to Hongkong on the 17th January, 1859, when he lost no time in reporting to the Secretary of State "the payment of the defendant's costs in the case of the Queen *v.* Tarrant," and calling Sir Edward Lytton's attention to "the conduct of Mr. Anstey in taking retainers against the Crown, and at the same time signing himself 'Attorney-General.'"

He reports Mr. Anstey for taking retainers against the Crown.

The unofficial members of the Legislative Council protest against the appointment of Mr. Rennie, Auditor-General, to the Council.

At a meeting of the Legislative Council held on the 4th December, presided over by the Lieutenant-Governor in the absence of the Governor, all the members being present, except the Chief Justice, who was absent on judicial business, the unofficial members protested against the addition by the Governor of the Auditor-General, Mr. Rennie, who had been gazetted on the 1st November as an additional member. The grounds of their objection were stated at length and contained, in short, a history of the Council from its conception. Mr. Rennie's appointment, however, was afterwards confirmed,† and the result of the unofficial members' protest communicated to the Council at a meeting held on the 18th May, 1859.

The pork butchers and Mr. Caldwell as prosecutor in an alleged unlawful assembly case.

It was Mr. Caldwell's turn now to come prominently again under public notice. As prosecutor in the Police Court, on the 11th December, he charged forty-one Chinese with having assembled illegally in contravention of section 22 of Ordinance No. 8 of 1858. It seemed that he had been informed by the tepo of the Lower Bazaar, that the pork butchers were to hold a large meeting on the 10th December, in order to combine for some unknown purpose; and, all such meetings (usually held to keep up prices) being illegal, unless leave was granted by the Governor, he informed the Superintendent of Police of the report

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* See his remarks upon the report of the Caldwell Commission: "Of the manner in "which the Commission discharged their duties, I cannot report satisfactorily," and again "this document, I believe, is considered by all parties (*sic*) most unsatisfactory...The Commissioners have strained every point which could possibly be made to tell against Mr. Caldwell." *Antè* Chap. XXIII., p. 523, § 40, and *id.*, p. 529, § 65.

† See Chap. XXVIII., *infrà*.

which had been made to him, and, on consultation with that officer, agreed to go with the Police to aid in discovering the rules of the pork butchers' society, if such existed or was about to be formed. Upwards of forty men were found assembled, and arrested, and the papers found on the premises, Mr. Caldwell informed the Police, were the rules of the society and invitations to the meeting.

At the Magistrate's Court the men were charged with breach of section 22 of Ordinance No. 8 of 1858, and with unlawful combination. The case was remanded by Mr. Mitchell, the Assistant Magistrate, in order that he might forward the depositions to the acting Attorney-General, and ascertain whether it might be committed for trial at the Supreme Court, instead of being dealt with summarily. A few days afterwards, Mr. Caldwell was informed that he would require to satisfy the Magistrate that the meeting was a public one and for purposes of combination. On the 17th December he received a note requesting his attendance at the Court, and immediately went up, but only to find that the defendants had all been discharged. Dr. Bridges appeared for four of the defendants, Mr. Anstey on behalf of thirty-seven; the Magistrate discharged the defendants, and a demand (which was not granted) was made for costs.

The defendants, defended by Dr. Bridges and Mr. Anstey, are discharged.

Mr. Anstey applied to have Mr. Caldwell fined for laying a false information or making a malicious arrest. The Magistrate replied that under present circumstances such a course on his part would be unbecoming, and as the Supreme Court was open to the parties wrongfully arrested, he declined. As soon as Mr. Anstey left the Court, Mr. Caldwell who, it is recorded, "had been lurking about the Court," entered and took his seat on the Bench as a Justice of the Peace. Three days afterwards Mr. Caldwell was served with two writs of summonses from Mr. Hazeland as solicitor for two of the Chinamen, claiming $1,000 damages from each. On an application for a rule nisi to quash the action, the Chief Justice on the 7th January, 1859, dismissed the application until the plaintiffs had been brought before the Court in the regular way and assured of protection against Mr. Caldwell and had stated their desire to discontinue the action. Such an insult, as great as it was merited, was never before cast upon a high officer of the Government, but from the records it does not appear that the matter was ever proceeded with, Mr. Caldwell having doubtless in the meantime brought his influence to bear.

Mr. Anstey's application that Mr. Caldwell be fined for malicious arrest.

On Mr. Anstey leaving the Court, Mr. Caldwell takes the Bench as a Justice of the Peace.

Action for damages against Mr. Caldwell.

Application for rule nisi to quash the action dismissed.

The result.

At the Criminal Sessions on the 18th December, Mr. Andrew Wilson, the editor of *The China Mail*, stood his trial for libelling Mr. Anstey, the Crown being nominally the prosecutor. *The China*

Prosecution and trial of Mr. Wilson, editor of

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*The China Mail*, for libelling Mr. Anstey.

The facts.

*Mail* besides being the avowed organ of the Government had always supported Dr. Bridges and his administration,* while showing an antagonistic spirit towards Mr. Anstey. The following are the particulars of the action which came on and terminated in a manner no less startling. The case of the Crown *v.* Tarrant was called on, as the reader will remember, on Thursday, the 18th November. It could not be proceeded with in consequence of the absence upon the alleged plea of sickness of several Government officers (one of whom was the Governor) whose testimony was essential to the defence. Mr. Anstey, the counsel for the defendant, scoffed jocosely at these alleged pleas of sickness, and, after some little fencing, the Chief Justice appointed the following Monday for the trial. These preliminary proceedings happened upon the publishing day of *The China Mail*, and either that evening or the following morning a leading article appeared on the subject, of which the following is an extract:—

"One of the wretched falsehoods employed to cheat public opinion in this case was used by Mr. Anstey in Court to-day, and was, as stated in defendant's newspaper, that Sir John was able to go to Aberdeen "on Saturday"—the fact being that he did go on a Saturday, two or three weeks ago before he was taken ill, but not on Saturday last."

In addition to this the same article contained such expressions as the following:—

"For purposes of revenge it is easy to rake up official or other quarrels, but care should be taken not to allow such to obscure other questions."

Again—

"Who has brought to bear all the low cunning of a steward's pantry,† and the ingenuity of an ex-Irish Member of Parliament."

* The following was Mr. Anstey's reply to an irrelevant question put to him at the Magistrate's Court by the defendant, Mr. Wilson, as to his authority for having stated that *The China Mail* was a tool of Dr. Bridges and his administration:—

"Because I always noticed when I have been the object of attack, it has been for the purpose of giving Dr. Bridges personally, politically, and socially the benefit of it. I verily believe that whenever it suited the views of these parties that characters should be libelled, the defendant was the person employed, except in cases where the officers of the Government themselves, from the highest downwards, had their part in the scandalous work. I found this belief, not only on the fact that the defendant, uncontradicted from the moment of his arrival, boasted in his paper that he was their organ, and enjoyed exclusive information, thanks to his connexion with them;—not only in the intrinsic evidence contained in the articles themselves of disgraceful violation of official confidence, and even the secrets of the Executive Council, either by members or by persons in their employ,—not only because *The China Mail* has enjoyed exclusive information withheld from or denied to other papers; not only because Dr. Bridges on oath in the Supreme Court *declined to deny his belief that Sir John Bowring was himself the author of some of the articles in the late case of the Queen against Tarrant*, but chiefly because it was a wicked and corrupt administration, whose destruction I had sworn to work. That is my answer, Sir."

† The word "steward" was an epithet of opprobrium which the editor of *The China Mail* was in the habit of attaching to the editor of *The Friend of China*, Mr. Tarrant, who was the defendant in the case referred to. Mr. Tarrant was at sea when a boy*—the steward dying and he, being the handiest lad on board, had to do steward's duty—hence the epithet. The ex-Irish Member of Parliament, of course, referred to Mr. Anstey as ex-member for Youghal.

* See *ante* Chap. III. § II., p. 74.

These remarks emanated from *The China Mail*, the Government organ, and were made upon the preliminary proceedings in a case in which the Crown was the prosecutor, and which ultimately failed without the defence being entered upon, and the sentences quoted above formed the gist of the libel which came to trial on the 18th December. Mr. Anstey applied to the Judge in the first instance for a writ of attachment, in order that the editor of *The China Mail* might be publicly reprimanded. The Chief Justice, however, refused, on the grounds of the matter being too serious for any punishment which he had the power to inflict under such circumstances. The matter consequently fell into the hands of the Crown Solicitor, who issued a summons from the Magistrate's Court, where the editor was committed to take his trial, as above stated, at the Criminal Sessions. There he did not attempt to plead justification, but put in the plea of not guilty. A special jury was summoned at the instance of the defendant. The acting Attorney-General, Mr. F. W. Green, prosecuted, and Mr. Kingsmill, defended. According to the records of the time, in opening the case, Mr. Green stated that—

"The libel was both false and malicious towards Mr. Anstey—false, inasmuch as a lie had been put into that gentleman's mouth, which he had never either uttered or made use of—malicious, in having stated that Mr. Anstey's object was to breed strife and feed revenge and not to serve his client; besides which the animus shown was most palpable both in the paper which contained the libel and in subsequent publications. That the libellous article pressed with peculiar force upon Mr. Anstey, inasmuch as the editor of *The China Mail* boasted that his journal was read by Her Majesty's Ministers, the remarks in which could not *in such case* but prejudice Mr. Anstey in their eyes, in his present peculiar and painful position. The libel charged Mr. Anstey with falsehood, and low cunning to defeat the ends of justice—further with having for his sole object the gratification of spite and revenge. The learned gentleman maintained that no barrister could pursue his vocations if he were not protected from such aspersions as these. But there was still another consideration which compelled him to press for punishment—that was the libel was peculiarly adapted to defeat or divert the ends of justice—it prejudged a case in its preliminary stage upon false grounds, and malicious reasoning, and it tended to prejudice the public and the jury in a marked manner and for a specific end and purpose."

After evidence had been taken contradictory of the allegations contained in the sentences quoted above, the matter of this libel, showing that Mr. Anstey had been subjected to much annoyance and injury by the attacks of the paper in question, which on one occasion had referred to Mr. Anstey as a *civilized savage*,—

"Mr. Kingsmill, the defendant's counsel, pointed out that the libel did not imply the coining of a falsehood on the part of Mr. Anstey, but the making use of a falsehood which had been printed in *The Friend of China*. He did not, however, lay much stress upon this defence, but he submitted that the words bore that interpretation and he threw his client on the mercy of the Court."

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Verdict for the Crown.

The Chief Justice said that he had no hesitation in giving his opinion that the libel charged Mr. Anstey with a *wretched falsehood*, but he would take the opinion of the Jury, who instantly and unanimously coincided with the Court.

*Mr. Kingsmill* then addressed the Court, and said his client would place himself in its mercy. He was desirous of expressing his regret at having published, unknowingly and unwittingly, the libel in question. His client had been willing to retract and apologize, but had been prevented by the conduct of the prosecution.

The sentence and apology.

*The Court*—"Very well, then, let a verdict be taken for the Crown, and let the defendant enter his own recognizance in £1,000 to appear and receive the judgment of this Court when called upon. In the meantime let the defendant make and print an apology, which ought to be an ample one;" "and," said His Lordship, "I would suggest to the Gentlemen of the Press, that, if they make mistakes, they should lose no opportunity of correcting them; and when they are wrong, set themselves right again at once."*

Colonel Haythorne, member of the Executive Council.

On the 24th December, Colonel Haythorne, Commandant of the Garrison, was gazetted a member of the Executive Council "on all occasions when Major-General Sir Charles Van Straubenzee was absent from the island."

Murrow v. Sir John Bowring.

Action for assault and false imprisonment.

The action for assault and false imprisonment instituted by Mr. Murrow against the Governor, Sir John Bowring, claiming $5,000 damages as before mentioned,† came on for hearing on the 30th December. Mr. Anstey was counsel for the plaintiff, and the acting Attorney-General, Mr. Green, represented the

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* The apology tendered was as follows:—

"With reference to the proceedings in the Supreme Court on the 18th December, when we were arraigned for a libel on Mr. Anstey, we have to state, that on reconsidering the articles in *The China Mail* of the 18th and 25th November and the 2nd December, we see that we have committed ourselves to a libel; but we take this opportunity of saying, that we had no intention of charging Mr. Anstey with either stating a falsehood or deliberately making use of one.

Our meaning was, that a false statement had been in circulation, to the effect that Sir John Bowring had been able to go to Aberdeen; and that Mr. Anstey had turned this statement to account in urging on the Court his opinion that the Governor was well enough to attend and give evidence.

We see that we also committed ourselves in charging Mr. Anstey with this use of a false report in supporting his client's cause; and that not merely the first article above-mentioned is open to the charge of libel, but also that the explanation we advanced is injurious in itself.

For the expressions contained in these articles we tender our apologies, and withdraw whatever has given offence, as also some expressions which have appeared in our later issues calculated to annoy. In short, on reviewing all the circumstances, we see we were in the wrong, and gave way to a momentary indignation which there was nothing to justify."—(See *The China Mail*, January 13.)

† *Antè* Chap. XX. § II., p. 471.

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Mr. Anstey, counsel for plaintiff.

Governor. The plaintiff, it will be remembered, had been committed to Gaol for six months and fined £100, on the 19th April last. He claimed that being neither a prisoner under civil or criminal process, he had by orders of the defendant been imprisoned in the criminal gaol in the company of felons, and that subsequently Mr. Inglis, the Governor of the Gaol, took him to his (Mr. Inglis') own room and there told him he was getting a room ready for him in the Debtors' Gaol, and that if he (plaintiff) would put the censorship of *The Daily Press* under his charge, he would keep him there entirely upon his own responsibility upon his giving his word he would not escape, and that when making the promise he was not aware that the Governor had done wrong in imprisoning him in the criminal gaol. Plaintiff also complained of the condition of the 'cell' in which he was imprisoned. The defence was a complete denial of the charge. After what was termed one of Mr. Anstey's 'best speeches' on behalf of the plaintiff and in which he again broke out in poetry* as he was sometimes wont to do,† the acting Attorney-General submitted there was no case to go to the Jury. The following conversation then took place :—

The plaintiff's case.

Acting Attorney-General submits no case to go to Jury.

*Hulme, Chief Justice*—I cannot certainly see any connexion of this case with Sir John Bowring. It is quite clear that Mr. Inglis acted upon his own responsibility in this matter; I shall therefore direct the plaintiff to be non-suited.

*Mr. Anstey* begged the Court would first allow him to quote authorities as to the responsibility of the defendant, before it proceeded to such a measure. He then quoted several cases to show the liability of the defendant for Mr. Inglis' acts.

*Mr. Green* [*Acting Attorney-General*]—My Lord, I have plenty of cases to show the contrary.

*Hulme, Chief Justice*—Oh! I know you have.

*Mr. Anstey*—Then, my Lord, I cannot consent on behalf of my client to a non-suit.

*Hulme, Chief Justice*—Very well, then; I shall direct a verdict for the defendant. You can then move for a new trial on the ground of misdirection, which I shall refuse, and then put the case in train for an appeal, if you wish.

Verdict for the defendant.

The Court then directed a verdict for the defendant.

New trial refused.

*Mr. Anstey* applied for a new trial which was refused.

Mr. Anstey's determination 'to work the destruction of Sir John Bowring's corrupt and wicked administration.'

Mr. Anstey may have "sworn to work the destruction of Sir John Bowring's corrupt and wicked administration," but

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* "In every branch of the Executive over which Sir John exercised authority," said Mr. Anstey, "had the glorious constitution of England been scandalized and disregarded, Sir John Bowring might use the words which Shakespeare put into the mouth of one of his characters :—

> Faith I have been a truant in the law;
> And never yet could frame my will to it;
> And, therefore, frame the law unto my will."

To obtain redress from that will so framed, all avenues were closed save one—that was the verdict of a jury...."

† See *antè* Chap. XXIV., p. 550.

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he cannot be said to have been successful in his determination to prosecute this action to the bitter end; and thus terminated another of those scandalous matters which will for all ages mark out the year 1858 as a memorable one in the dark pages of Hongkong's history, with the astonishing coincidence of a suspended Attorney-General seeking the punishment of the Governor of the Colony upon a matter wherein his own judgment must have told him he was quite wrong both as to law and facts.

The year 1858 a memorable one in the dark pages of Hongkong's history. A suspended Attorney-General seeking the punishment of the Governor.

The whole of the year was marked by the prosecution of deadly feuds between officials and others to the detriment of the public service and of society generally in Hongkong, which for some considerable time had been seething like a caldron from the heat of the contest between the parties headed, respectively, by Mr. Anstey, Sir John Bowring, and his now degraded friend, Dr. Bridges.

Prosecution of deadly feuds between officials and others.

Ch. XXV § II. 1859.

On the 4th January, 1859, Mr. Davies, the Chief Magistrate, moved in the Legislative Council for the production of the correspondence relative to the opium farm privilege and Dr. Bridges. The Lieutenant-Governor, Colonel Caine, regretted he could not accede to the request, and at a subsequent meeting, held on the 20th January, Mr. Davies put in his protest against such refusal of the Lieutenant-Governor and his reasons for thinking the motion a proper one to be discussed. Sir John Bowring who presided at this latter meeting, having returned to the Colony, as before stated, on the 17th January, remarked that the despatch received from the Secretary of State was a privileged communication and could not be called for;* that it contained no opinion favourable or unfavourable to the finding of the Committee upon Dr. Bridges' conduct in relation to the opium farm and that it could not be produced; but that he had no objection to Mr. Davies' protest being entered upon the minutes.

Mr. Davies, Chief Magistrate, moves in Legislative Council for production of correspondence relative to Opium Farm privilege and Dr. Bridges.

Protest of Mr. Davies against the refusal of Government.

Two Ordinances were then passed through their second reading *nem. con.* They were simply to amend Ordinances passed last year which the Secretary of State for the Colonies would not confirm without the alterations which these Ordinances involved.

Secretary of State's refusal to confirm two Ordinances without alteration.

One referred to deportation. The Secretary of State disapproved of the power, which Ordinance No. 8 of 1858 gave the Governor, of deporting Chinese to any part of the Emperor's Dominions, and suggested that the limits of such deportation should be restricted to the native place of the individual de-

Ordinance No. 8 of 1858.

* This was the despatch in acknowledgment of Dr. Bridges' services, referred to *antè* Chap. XXIII., p. 509.

ported.* Accordingly, at an adjourned meeting on the 20th January, the amending Ordinance (No. 1 of 1859) was passed, and its only section read as follows:— Ch. XXV § II. 1859. Ordinance No. 1 of 1859.

1. That no person who shall be deported by His Excellency the Governor-in-Council, under the twenty-eighth section of Ordinance No. 8 of 1858, shall be deported to any place other than the native country of such person, without such person's free will and consent."

The other had reference to the Penal Servitude Ordinance, No. 10 of 1858, which provided by section 4 that any prisoner in Gaol who, being cognisant of an escape, did not prevent it, should be punished as an aider and abettor. This was entirely repealed by one of the Ordinances now brought forward, and which was also passed on the 20th January, 1859, and numbered 2 of 1859. Ordinance No. 10 of 1858. Ordinance No. 2 of 1859.

At the meeting of Council on the 4th January, the Governor further stated that at the end of every session of the Imperial Parliament, it had been arranged that the Attorney-General of the Colony should peruse the legislative enactments of that period, and selecting such as it might be desirable to adopt to keep pace with the progress of the times, and such as might be adapted to the requirements of the Colony, embody the same in an Ordinance and submit it to the Council, and that it was in pursuance of such an arrangement that Mr. Anstey had submitted Ordinance No. 5 of 1858.† Statement of the Governor on the instructions to the Attorney-General "to keep pace with the progress of the times" relative to the introduction of Acts of Parliament. Ordinance No. 5 of 1858.

Sir John Bowring now asked the Council to repeal that Ordinance, regarding which, as he had stated at a previous meeting of the Council on the 4th October, 1858,‡ a despatch had been received from the Secretary of State, and which despatch, he now proceeded to read.§ Sir John Bowring asks the Council to repeal the Ordinance, in accordance with instructions from Secretary of State.

With regard to Ordinance No. 13 of 1858, the remarks of the Secretary of State in reference to Ordinance No. 5 of 1858 were as appropriate and disclosed carelessness on the part of the Hongkong Legislature in adopting Imperial enactments, perfectly inapplicable to the circumstances of the Colony. Ordinance No. 13 of 1858. Imperial enactments inapplicable to the circumstances of the Colony.

After having read the despatch before alluded to, the Governor said that, upon the strength of such a very important The Governor as to steps he had taken.

* The clause objected to was the following:—

28 § 9. "For every offence against section 23, a sum not exceeding five dollars; or the offender shall, at the discretion of the Court, receive not more than thirty-six blows, nor less than five blows, with a rattan; and he shall also, if His Excellency in Council shall so decide, be deported to any place in the Chinese Empire or elsewhere."

† See *antè* Chap. XXIV., p. 543.

‡ *Id.*, p. 542.

§ *Id.*, p. 545.

Ch. XXV § II. 1859.

document, it became imperative to do something; that he had placed the matter in the hands of the late Mr. Day, with instructions to frame an Ordinance to meet the exigencies of the case; that Mr. Day's sickness and demise had delayed the matter; and that now it had been placed in the present acting Attorney-General's hands with similar instructions.

The acting Attorney-General's suggestion that the matter stand over until the Attorney-Generalship be permanently filled.

The acting Attorney-General, Mr. Green, said that his tenure of office was so uncertain, and the subject involved such an extensive amount of legislation, that he did not feel justified in meddling with it; that Ordinance No. 5 of 1858, as it stood, was quite inoperative; and that therefore he suggested it should remain as it was until the Attorney-Generalship should fall into permanent hands.

The Chief Justice's approval of the course suggested and the 'superfluous piece of legislation.'

The Chief Justice was of the same opinion, adding that, when Mr. Anstey submitted the Ordinance to the Council, he had considered it a superfluous piece of legislation.

The Governor as to such subjects being left to the law officers.

The Governor said that such subjects were always left to the law officers, for it could not be expected that the other members could wade through the enactments of an entire session of Parliament. He thought that an Ordinance, the defects of which were of such a nature as those pointed out in the despatch, should be repealed, but as no one seconded him, the acting Attorney-General's suggestion was adopted *nem. con.*

Mr. Davies, Chief Magistrate, and the 'unmerited slur' cast upon Mr. Anstey.

The despatch was ordered to lie on the table, and the Council then adjourned to the 4th February when the minutes of the previous meeting held as above were read, but, previously to their being confirmed, the Chief Magistrate, Mr. Davies, begged to remark that a slur had been cast upon Mr. Anstey which he thought was unmerited. The absent gentleman had been accused of hasty legislation, and it appeared that an Ordinance which he had framed had been sent back for reconsideration by the Secretary of State, which Ordinance the Council at the last meeting had decided should lie over until the post of Attorney-General was permanently filled. The Chief Magistrate begged to remark that this same Ordinance had actually been confirmed by Her Majesty's Ministers,* who were therefore equally to blame with Mr. Anstey. He thought the circumstances of the confirmation should be expressed on the minutes.

The Governor's reply.

The Governor replied that the Secretary of State had laid a complaint against the Council of hasty legislation—it was a grave charge and had been laid before the Council without loss

* See Sir Edward Lytton's despatch, *antè* Chap. XXIV., p. 545.

of time. He believed that the minutes merely contained a *verbatim* extract of the acting Attorney-General's motion.

Mr. Davies' defence on behalf of an 'absent member.'

The Chief Magistrate replied in that case he had no more to say, but he felt sure the Governor would excuse him for appearing in the defence of an absent member.

Comments upon Mr. Davies' action.

His anxiety to defend his friend, Mr. Anstey.

In the face of the facts hereinbefore related in reference to Ordinance No. 5 of 1858, it seems difficult to understand the attitude of Mr. Davies in the above discussion, except his evident anxiety to endeavour as far as possible to relieve his friend, Mr. Anstey, of the entire responsibility attached to the blame conveyed by the Secretary of State in his despatch under consideration. Mr. Davies, it may be added, was on terms of great friendship with Mr. Anstey, and had on more than one occasion extended his sympathy to him in the treatment he had received from the local authorities, whose corruption and incompetency had been but too palpable to himself also since his tenure of office in the Colony.

By whatever light taken, however, this was but a generous action on the part of Mr. Davies on behalf of his energetic and conscientious absent friend Mr. Anstey, who, imbued with good intentions no doubt and when suspended and practically superseded, had never had an opportunity afforded him of explaining matters in reference to the rejected Ordinances.

Departure of Mr. Anstey for England.

Mr. Anstey left Hongkong for England on the 30th January, 1859, by the P. & O. Mail Steamer *Cadiz*, on twelve months' leave of absence on medical certificate, which fact Sir John Bowring duly reported to the Home authorities. His departure, however, but transferred the question of his suspension and the facts in reference thereto, to a different place.*

Ordinance No. 5 of 1858, when repealed.

With reference to the debate in Council as to framing a fresh Ordinance "to meet the exigencies of the case," and the suggestion of Mr. Green that the matter should stand over until the Attorney-Generalship be permanently filled, it may be mentioned that it was not until the 30th April, 1860, that any steps were taken, when Ordinance No. 5 of 1860 was passed, repealing Ordinance No. 5 of 1858, *in toto*. Considering the discussion that ensued upon the latter Ordinance, it may not be inappropriate to reproduce here Ordinance No. 5 of 1860, which in its preamble shows how it was intended hereafter to deal with the provisions of the enactment repealed :—

Ordinance No. 5 of 1860.

**An Ordinance for repealing Ordinance No. 5 of 1858.**

**Whereas it is expedient and necessary to provide by distinct legislative measures for the various objects embraced by Ordinance No. 5 of 1858 ; and, in**

* See Chap. XXVI., and subsequent references.

Ch. XXV § II. — 1859.

order to establish such legislation on a proper basis, it is necessary to repeal the said Ordinance: Be it therefore enacted and ordained by His Excellency the Governor of Hongkong, with the advice of the Legislative Council thereof:—

1. That Ordinance No. 5 of 1858 be, and the same is henceforth and hereby repealed.

The 'distinct legislative measures.'

Ordinance No. 5 of 1860.

Ordinance No. 7 of 1860.

Ordinance No. 5 of 1858.

With but few exceptions have the Imperial Acts, which it was intended to introduce, been since incorporated with the laws of Hongkong, but, as will be seen later on, on the same day that Ordinance No. 5 of 1860, before alluded to, was passed, the Legislature also passed Ordinance No. 7 of 1860, which extended to the Colony the whole of the second schedule of the repealed Ordinance No. 5 of 1858,* relating to certain 'Rules, Orders, and Regulations of the Superior Courts of Law and Equity at Westminster' which Mr. Anstey had introduced, and which, it will be remembered, the Chief Justice had qualified, while the question of hasty legislation was before the Council, as being 'a superfluous piece of legislation.'

Ordinance No. 13 of 1858.

Ordinance No. 6 of 1859.

As regards Ordinance No. 13 of 1858, it was afterwards modified, and on the 26th December passed the Legislature, being numbered Ordinance No. 6 of 1859, and entitled "An Ordinance for providing Hospital Accommodation on board Chinese Passenger Ships, and for the Medical Inspection of the Passengers and Crews about to proceed to sea in such Ships."

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* *Antè* Chap. XXIV., p. 544.

# CHAPTER XXVI.

## 1859.

Mr. Anstey's brief and troubled career in Hongkong reviewed.—His incorruptible sense of public duty.—His consciousness of rectitude and the success of his efforts.—The Crown *v.* Tarrant.—Caldwell *v.* The Pork Butchers.—Mr. Anstey's charges against Dr. Bridges.—No other man in the Colony qualified for the task which Mr. Anstey had undertaken.—Thwarted by the Governor and Dr. Bridges, as partisans of Mr. Caldwell.—Government of Sir John Bowring contrived to whitewash Mr. Caldwell.—Colonel Caine desirous that his protégé, Mr. Caldwell, should not appear as an undesirable subject.—Mr. Anstey leaves Hongkong in bad health.—Mr. Anstey not resting on his oars on arrival in England.—Sir John Bowring directly responsible for condition of affairs in the Colony.—The animosity displayed towards Mr. May.—A Chinaman again upon the Jury List.—Anxiety of Chinese to serve upon the Jury.—Ordinance No. 18 of 1887, s. 8.—The position of a juryman.—Ordinance No. 8 of 1895, s. 5.—Murder of a Chinese boy on board the American ship *Mastiff*. Trial of the English sailors, Gibbons, Jones, and Williams.—The facts. Sentenced to death.—The Chief Justice and 'the black cap.'—Sentence against Williams commuted.—Execution of Gibbons and Jones.—The Chinese gratified.—The enthusiasm of the Chinese mandarin at Kowloon.—The lamentable bungling at the execution.—Not satisfied with the public execution of the Englishmen, the Government seek further advertizement 'to please the Chinese.'—Government Notification that under authority of British law equal justice is dealt to all.—The absurdity of the notification.—Order of Her Majesty-in-Council of 3rd March, 1859, repealing prohibitions on the trade of British subjects.—Mr. Anstey and the Caldwell-Ma Chow Wong connexion in the House of Lords and House of Commons.—Public meetings at Sheffield and Newcastle.—Petitions to the House of Lords signed by the Mayors and inhabitants of Sheffield and Newcastle.—Discussion in the House of Lords upon the petitions.—In the House of Commons.—In the House of Commons Mr. Ridley asks for particulars about the Caldwell-Ma Chow Wong connexion; the case against Mr. Tarrant and destruction of papers by order of Dr. Bridges.—Sir Edward Lytton's reply and interesting speech.—Proposal to refer papers to legal adviser. Mr. Anstey's suspension confirmed.—*The Times* upon the position in Hongkong.—The allusion to Sir John Bowring and Dr. Bridges.—'A man of tact and firmness to settle the matter' suggested.—Sir Edward Lytton's despatch dismissing Mr. Anstey.—'The Secretary of State takes no notice of accusations against a public officer in a Colony unless they come before him through the Governor.'—'The Attorney-General is an officer whose especial function is to render counsel and assistance to the local Government.'—The unfortunate condition of the public service in Hongkong to be inquired into by the new Governor.—The despatch.—A plain recall of Sir John Bowring.—Departure of Admiral Sir M. Seymour.—The community present him with an address and a piece of plate of the value of 2,000 guineas.—Admiral Seymour records his sense of Mr. Caldwell's services.—Admiral Hope succeeds Admiral Seymour.—Return of Mr. Pollard as a barrister.—Temporary removal of the Magistracy to Pedder's Hill.—Hongkong affairs again before Parliament.—Motion of Mr. Edwin James for production of papers.—Letter from the Earl of Carnarvon to Mr. Anstey expressing 'sincere regret' at the confirmation of his suspension.—*The Morning Herald* on Sir John Bowring and the discreditable state of affairs. 'An empty-headed, malevolent, lying, political quack like old Bowring.'—Mr. Anstey's successor as Attorney-General, Mr. Adams, connected with *The Morning Herald*.—Arrival of Mr. H. C. Caldwell, a brother of Mr. D. R. Caldwell, from London.—Previously Registrar of the Recorder's Court at Singapore and a fugitive defaulter.—A backed criminal warrant in the hands of the Superintendent of Police.—He is allowed to depart for Macao.—Mr. Anstey's report to the Secretary of State.—Mr. H. C. Caldwell afterwards as an attorney of the Supreme Court of Hongkong.—Mr. Anstey's pamphlet 'Civil Government at Hongkong.'—He proceeds to India and joins the local bar.—Mr. Anstey's return to England on Mr. Caldwell's dismissal in 1861.



Mr. Anstey's brief and troubled career in Hongkong reviewed.

THE departure of Mr. Anstey closed his brief and troubled career in the Colony where he contrived to keep up the character he had won at Home, and now that his back was turned, there was no disposition to abuse him. On the contrary, with few

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exceptions, the community outside the official pale were inclined to overlook his faults and to feel sorry for the treatment he had received, particularly when the talent, deep research, and pains no matter how trivial the case, of the professional man, came to be considered, although there was no denying that he was violent and impetuous and occasionally out-stepped the bounds of propriety. Time and health were quite secondary considerations to him or to the interests of his clients. No one could think of this or his incorruptible sense of public duty, his implacable animosity towards the officers of Government whom he believed to be dishonest, and not respect him. He laboured under the delusion, however, that if he brought home iniquity to his oppressors, he at least would enjoy the smiles of the public in support of his consciousness of rectitude, and the success of his efforts might have been tested by the cases of the Crown *v.* Tarrant* and Caldwell *v.* The Pork Butchers.† And again his straightforward courage and indomitable pluck were certainly the leading features of his character—for instance, the complaint which he contrived to bring against Dr. Bridges before the Opium Farm Commission.‡ No one had heard of it before, and without him, probably Dr. Bridges might have gone on unscathed.§ Then again in charging the same individual before the Caldwell Inquiry Commission. The accusation was brought before the face of the accused, without ever having been hinted at before. The labour and worry which the Caldwell Inquiry alone must have cost him must have been enormous—in fact, there was not another man in the Colony whose capacity for work, whose ability for instituting or being responsible for similar proceedings, and determination to carry them through, were at all equal to the task. Yet at every turn and corner he was thwarted by the Governor himself and by the acting Colonial Secretary, Dr. Bridges, who actually made themselves partisans of Mr. Caldwell, and to what lengths both the latter and Dr. Bridges would have gone, had it not been for Mr. Anstey, it is difficult to say. Undoubtedly if the advisers of Sir John Bowring did not actually connive at Mr. Caldwell's escape from the charges brought against him, at all events they contrived to whitewash him on account of his past services to the Navy in putting down piracy‖ as well as of what was considered the desirability of keeping him in the service on account of his knowledge of Chinese.¶ Qualified Chinese interpreters, as has been seen, were not to be

His incorruptible sense of public duty.

His consciousness of rectitude and the success of his efforts.

The Crown *v.* Tarrant.

Caldwell *v.* The Pork Butchers.

Mr. Anstey's charges against Dr. Bridges.

No other man in the Colony qualified for the task which Mr. Anstey had undertaken.

Thwarted by the Governor and Dr. Bridges, as partisans of Mr. Caldwell.

Government of Sir John Bowring contrived to whitewash Mr. Caldwell.

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* *Antè* Chap. XXV. § I., p. 556.

† *Id.*, p. 564.

‡ *Antè* Chap. XXI., p. 472.

§ See further on this subject, Vol. II., Chap. XXXIV.

‖ On this point see *antè* Chap. XII. § I., p. 286, and also Chap. XXVI., *infrà*.

¶ See *antè* Chap. XVI. § I., p. 361; Chap. XVII. § I., p. 408, and paragraph 20 of Sir John Bowring's despatch, *antè* Chap. XXIII., p. 520.

had, and, having taken him back into the service, it was not thought desirable to get rid of him, and undoubtedly Major (now Colonel) Caine, who had introduced him into the service, was not desirous that his *protégé* should appear as an undesirable subject. If Government had done well and its duty, Mr. Caldwell should have been dismissed then and there after the result of the Commission, and the community would have had less reason to think more of those into whose hands the administration had fallen.

Colonel Caine desirous that his protégé, Mr. Caldwell, should not appear as an undesirable subject.

As it is, Mr. Anstey left Hongkong in extremely bad health, having suffered for months, according to the certificate of Staff-Surgeon Menzies, "from dyspepsia in an aggravated chronic form and from neuralgic headache of so severe a character as to have seriously impaired his health and constitution." The community, however, showed Mr. Anstey no civility before he left, and although it was well known that he had sold his bungalow and was houseless for some days before his departure, it is said the only one who extended a hospitable hand to him was an American gentleman.

Mr. Anstey leaves Hongkong in bad health.

A local paper, whilst commenting upon the sad facts leading to the suspension of Mr. Anstey and of the determination of the Government of the Colony to shield Mr. Caldwell's conduct from investigation, as well as to the animosity displayed towards Mr. May for his laudable conduct in supporting Mr. Anstey in declaring in unqualified terms that Mr. Caldwell was connected and associated with Ma Chow Wong, and whose suspension in consequence had been actually resolved upon at the same time as Mr. Anstey's was perpetrated, concludes as follows as regards the career of the latter in Hongkong:—

Sir John Bowring directly responsible for condition of affairs in the Colony.

The animosity displayed towards Mr. May.

"Regarding the victim, the Honourable T. Chisholm Anstey, we feel bound to speak personally. That he is a very impracticable man when he is thwarted cannot be denied. That he is excessively zealous and often erratic even when not thwarted, we do freely admit—but that he has clean hands, a keen sense of public duty, and a heart that bears not malice long, we do firmly believe. With an ardent temperament, an enthusiast in his profession, and a sort of gladiator both at the bar and at the House of Commons, he has been brought up under a pressure of friction which makes the excitement of opposition essential. He sees his path of duty only as it serves the interests of his client, and all other considerations are sunk or thrown aside. From that path neither fear, favour, nor reward will divert him—and on that path he stands or falls....He is far too capable, too restless, too indefatigable a man for a small Colony like this—but had we had a Governor who could have restrained his impetuosity instead of rousing his indignation, he would have been a great blessing to this Colony, and to our relations with China too. The ultimate question of his suspension rests not with the present Ministry, nor with the present generation. It is a great fact—the culminating point of a sad catastrophe, which history recording with detestation will make him the antidote of. That he can be made the unwilling scape-goat we do not believe; but even if he is, he will not be a silent one."

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How far this prognostication proved correct, events will show, and the truth of the allusion to the fact that, had there been a different Governor, "Mr. Anstey would have been a great blessing to this Colony." explains the whole of the disreputable controversies which led to the disappearance from Hongkong of this worthy man and at a time when his presence was all but indispensable. It is doubtful whether, if Mr. Anstey had been made acting Colonial Secretary, instead of Dr. Bridges whom Sir John Bowring had had forced on him by Mr. Mercer, and whom he himself had denounced, the scandal which will ever attach to his administration, through his weakness and incapacity, would have been possible, and to that one fact alone must be attributed the disgust perhaps which had wrought itself into Mr. Anstey's mind to bring on eventually his own downfall. In modern times such things would be well nigh impossible.

Mr. Anstey not resting on his oars on arrival in England.

But Mr. Anstey was not the one to rest quietly on such laurels as he had now won through his own exertions in the face of the greatest opposition, especially after the verdict of the Jury in the case of the Crown *v.* Tarrant, and his determination and pertinacity, characteristic of the man, on his arrival in England to see Hongkong purged of its 'noisome scandal'* was, as will hereafter be seen, but the natural outcome of the treatment he had received.

A Chinaman again upon the Jury List.

The name of a Chinese resident again appearing on the Jury List,† at a debate in Council held on the 22nd February, by a majority of 6 to 3, it was decided to retain the name on the list.

Anxiety of of Chinese to serve upon the Jury.

From this period, Chinamen aquainted with the English language have been placed on the Special and Common Jury Lists, and the anxiety on the part of many of them to take their place with the rest of the community in serving upon the Jury has been frequently manifested by the applications sent in by them to the Registrar of the Supreme Court when preparing the Jury List in accordance with section 8 of Ordinance No. 18 of 1887.‡

Ordinance No. 18 of 1887, s. 8.

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* *Antè* Chap. XVII. § I., p. 405.

† See *antè* Chap. XX. § II., p. 465.

‡ The following is the section :—

"The Registrar shall, on or before the first day of February in each year, make a list in alphabetical order of all persons ascertained by him to be liable to serve as jurors, setting forth the name and surnames of each at full length, together with his profession, business, or occupation, and place of abode, and shall cause a copy of such list to be posted for the term of one fortnight at the chief entrance to the Court. And any person may apply by notice in writing to the Registrar requiring that his name or the name of some other person may be respectively either added to or struck off from the said list, upon cause duly assigned in such notice; and the Registrar, immediately after the expiration of the time for posting such list, shall forward the same and such notices as may be so served on him, to the Clerk of the Legislative Council....."

In the List of Jurors for 1898, five special jurors are Chinamen, while in the list of common jurors figure the comparatively large number of twenty-three.

The position of a juryman.

Generally, to be placed on the list of special jurymen is considered to denote a position of standing, and the eagerness on the part of many of the mercantile community especially, irrespective of the Chinese, to be placed on that list is always fully evident, and so on an inverse ratio it is considered dignified, if not an honour as well, on the part of the Chinese, to serve on the jury. Not many privileges are conferred upon a juryman except *quâ* juryman, but under Ordinance No. 8 of 1895, section 5, a special or common juror may carry arms without a licence.

Ordinance No. 8 of 1895, s. 5.

Murder of a Chinese boy on board the American ship *Mastiff*.

Trial of the English sailors, Gibbons, Jones, and Williams.

At a special Criminal Sessions held on Wednesday, the 23rd February, 1859, Robert Gibbons, Robert Jones, and Charles Williams, seamen on board the American ship *Mastiff*, were indicted for the wilful murder of a Chinese boy, a servant to the captain of the ship. The prisoners were defended by Mr. Kingsmill. The case for the Crown was conducted by Dr. Bridges, at the request and in consequence of the illness of the acting Attorney-General, Mr. Green.

The facts.

On the 28th December, in consequence of the deceased making a charge against the prisoner Gibbons, the captain, to avoid the desertion of the crew, moored his ship near Green Island. On the last night of the year, the deceased was murdered by means of a rope being tightly fastened round his neck and his body thrown overboard. It was known that the captain had a large sum of money on board which was kept in a secret drawer in the captain's library, but no one knew where the money was kept except the captain himself, his wife, and the Chinese boy. The motive of the murder therefore was robbery, because, the boy once out of the way, suspicion would fall upon him which his disappearance would but strengthen. Just one week after the murder, by an accident, the body of the murdered boy appeared within a few inches of the ship, to demand, as it were, justice against his murderers. The prisoner Gibbons made an admission that he was present when the murder was committed, and from the information he gave, ninety-six of the stolen sovereigns were afterwards recovered, as well as a gold chain which was found in a belt he was wearing at the time and which furnished clear proof also as against the prisoner Jones, as the belt belonged to him. Williams denied that he was even a spectator of the crime or that he had had any hand in it. The Jury, after consulting about fifteen minutes, returned a

Sentenced to death.

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verdict of guilty against the three prisoners. The Chief Justice, as was customary with him in such cases, retired and returned into Court wearing the Black Cap,* and sentenced the prisoners to death, holding out no hope of mercy.

The Chief Justice and 'the black cap.'

Sentence against Williams commuted.

Execution of Gibbons and Jones.

On the 2nd March the sentence against Williams was commuted to penal servitude for life, and that against Gibbons and Jones was carried out at half-past six on Monday morning, the 7th March, over the eastern wall of the Gaol. Upwards of two thousand persons, principally Chinese, were present. It is said that the Chinese "were very much gratified at the fact that so strict justice was dealt out, and the murder of a Chinaman was visited with so severe punishment." The military mandarin formerly stationed at Kowloon, who was about to proceed on active service against the rebels on the Yang-tsze, expressed himself on the subject with so much enthusiasm that it seemed he had formed something like a correct idea of the justice of English Courts.

The Chinese gratified.

The enthusiasm of the Chinese mandarin at Kowloon.

The lamentable bungling at the execution.

There was some criticism on the bungling manner in which Gibbons was despatched, and the painful exit of the poor man was described as lamentable. Not satisfied with the public execution of these two unfortunate Englishmen, which in itself was quite sufficient as the law had been fully vindicated, the Government now, as had been done in the case of the unfortunate Ingwood, hanged together with the Chinaman Chun Afoon in July, 1845,† sought further advertizement, if not gratification, by issuing the following notification on the day after the execution, with the view evidently of further 'pleasing the Chinese':—

Not satisfied with the public execution of the Englishmen, the Government seek further advertizement 'to please the Chinese.'

Government Notification that under authority of British law equal justice is dealt to all.

GOVERNMENT NOTIFICATION.

His Excellency the Governor has caused the issue of the subjoined proclamation to the Chinese population of Hongkong, on the occasion of the recent execution of two British subjects for the wilful murder of a Chinese boy on board a vessel in this harbour.

In adopting this measure, His Excellency is influenced by the desire to make known to the Chinese inhabitants in and beyond the Colony that, by Her Most Gracious Majesty's Government and under the authority of British law, equal justice is dealt to all persons without regard to nation, to blood, or to any accidental circumstances whatsoever.

By Order,

W. T. Mercer,
*Colonial Secretary.*

Colonial Secretary's Office,
Victoria, Hongkong, 8th March, 1859.

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* Upon the subject of the 'Black Cap' and Chief Justice Hulme, see *antè* Chap. XVIII., p. 430.

† See Chap. III. § II., *antè* p. 85.

What effect such a notice as this could have had upon a people like the Chinese, it is hard to conceive, making the positive absurdity of it, to say the least, all the more apparent.

The absurdity of the notification.

An Order of Her Majesty-in-Council, dated the 3rd March, 1859, repealing prohibitions on the trade of British subjects with China, imposed by the Orders-in-Council of the 24th February, 1843, and 13th June, 1853, was duly published on the 9th July, 1859.

Order of Her Majesty-in-Council of 3rd March, 1859, repealing prohibitions on the trade of British subjects.

The annihilation of the Caldwell and Ma Chow Wong connexion, achieved by Mr. Anstey and consummated by his suspension, had now arrived on the *tapis* of the House of Lords and House of Commons to serve as oil poured on the flames. In February public meetings were held at Sheffield and at Newcastle "relative to the conduct of Mr. Caldwell and the doings generally of the Government of Hongkong," and the resolutions embodied in petitions signed by the Mayors and inhabitants, which were afterwards laid before the House of Lords.

Mr. Anstey and the Caldwell-Ma Chow Wong connexion in the House of Lords and House of Commons.

Public meetings at Sheffield and Newcastle.

Lord Cranworth, in presenting the Sheffield petition, (which asked that certain members of the Hongkong Government be punished for wickedness and corruption), said:—"I entirely concur in that prayer."

Petitions to the House of Lords signed by the Mayors and inhabitants of Sheffield and Newcastle.

Earl Grey told the Earl of Carnarvon that even though one day of Sir John Bowring's time was unexpired he should be recalled for the sake of example.

Lord Lyndhurst said that, after the most minute inquiry, he pledged himself to the course suggested by Earl Grey.

Discussion in the House of Lords upon the petitions.

In the House of Commons, Sir James Graham, Mr. Gladstone, and other leading members of the House, also spoke in favour of some such step as had been suggested by Lord Grey, and adopted the resolutions come to by the House of Lords.

In the House of Commons.

On a subsequent day Hongkong affairs, including the case of the Crown against Mr. Tarrant, and the destruction of papers, by order of Dr. Bridges, which implicated Mr. Caldwell with Ma Chow Wong, again came up for discussion in the House of Commons, when will be seen the view which the Colonial Office had already taken of the scandalous state of affairs prevalent in the Colony. The discovery by Sir Edward Lytton, the Secretary of State, from a perusal of the papers of "hatred, malice, and all uncharitableness in every possible variety of aspect, and consequently what might be considered a description of official life in the Colony," was about the best picture that could have been drawn upon the subject at so early a stage of

In the House of Commons Mr. Ridley asks for particulars about the Caldwell-Ma Chow Wong connexion; the case against Mr. Tarrant and destruction of papers by order of Dr. Bridges.

Chap. XXVI. the discussion. The following debate of the proceedings in the House of Commons is taken from the Home papers of the period, and Sir Edward Lytton's amusing speech in reply to Mr. Ridley will no doubt be read with more than ordinary interest even at this period, the confirmation of Mr. Anstey's suspension being now, moreover, a foregone conclusion :—

1859. Sir Edward Lytton's reply and interesting speech.

Proposal to refer papers to legal adviser.

Mr. Anstey's suspension confirmed.

"Mr. Ridley asked the Secretary of State for the Colonies, whether Her Majesty's Government had received the report of a Commission appointed to inquire into a charge brought against Mr. Daniel Richard Caldwell for participating in the profits of piracy during the time he was holding an office under the Government of Hongkong ; also a report of the trial of "The Queen *against* William Tarrant," which took place in the month of November last, in the Supreme Court in Hongkong, and in which trial it was sworn that certain papers implicating Mr. Caldwell in the above charge were destroyed by order of Dr. Bridges, acting Colonial Secretary, at that time exercising, as was alleged, an unlawful authority conferred by the Governor of the Colony. If these reports had been received, what course Her Majesty's Government had taken with reference to the transactions to which they relate ; and whether they would lay upon the table any papers which might contain information on the subject.

Sir E. B. Lytton was understood to say, that the Government had received the report of the Commission, and in order to give the House some idea of the extent of the papers relating to the subject, he had brought them down with him. [The Right Honourable Baronet then exhibited a large pile of papers, and considerable amusement was caused by their dispersion over the table in consequence of the string by which they were tied together having given way.] On the arrival of the documents they were found to contain many points of legal evidence, and the greatest possible amount of abuse—(laughter) —and it had been considered necessary to submit them to the strictest investigation. They proposed therefore to refer them to a legal and dispassionate colonial adviser of the Crown. He discovered in them hatred, malice, and all uncharitableness in every possible variety of aspect, and consequently what might be considered a description of official life in the Colony. (Laughter.) With respect to the second question, whether he had received a report of the trial of "The Queen *v.* Wm. Tarrant," he begged to say that he had received from the Governor only the result of that trial, but a full report of the trial, taken in shorthand, had been promised, and ever since the announcement of that fact a universal shudder every day pervaded the Colonial Department. (Laughter.) What would be the extent of that report Heaven only knew. (Continued laughter.) With regard to the main question, the Commission had acquitted Mr. Caldwell of the charge of participating in the profits of piracy. They had also acquitted him of several other grave charges, which ought never to have been brought against him, particularly by a brother-officer, and the brother-officer who made them ought to be dismissed from the office he now held unless he could make a satisfactory explanation. Nevertheless, certain facts had come out in the course of the trial which showed that, so far as regarded the interests of the Colony, Mr. Caldwell ought to be dismissed from his office, unless he could give some satisfactory explanation, which he had been called upon to do. On the other hand, he must say that the mode in which Mr. Anstey had originated and conducted that inquiry, and the breach of official confidence which occurred in the course of the trial had led the Governor to suspend him ; and after a dispassionate consideration of the papers, he could come to no other conclusion than that the Governor's decision ought to be confirmed. The right honourable gentleman, having entered into a detailed statement of the facts as they appeared in the papers,

said he now came to the question as to the course which Her Majesty's Government intended to pursue with reference to these transactions. It was his intention, as soon as possible, to direct a most careful examination into the whole of the facts. The honourable gentleman wished to know whether the Government had any objection to the production of papers. He (Sir E. B. Lytton) shrunk from the responsibility of laying such a mass of papers on the table. He would rather lay the table on them. (Laughter.) He had not the slightest personal or official objection to their production, and if the honourable member would move for them he would have them; but he should look with compassionate admiration on any devoted member who would undertake to read them. (Laughter.)"

*The Times upon the position in Hongkong.*

*The Times* of the 15th March, in a most interesting but far from complimentary article upon Hongkong generally, mentioning also the trouble that the place had already given to the authorities in England, while commenting upon the discussion in the House of Lords and in the House of Commons, dealt fully with the state of chaos in the island, and not wrongly attributed it to the 'faults in the conduct' of Sir John Bowring and the incongruous positions held by Dr. Bridges, as well as the 'imperfectly regulated energies of Mr. Anstey.' The suggestion of sending out 'a man of tact and firmness to settle the matter' was but the precursor of the coming and necessary changes now awaiting the Colony. The article, evidently by a 'knowing hand,' headed "Hongkong Grievances," was as follows:—

The allusion to Sir John Bowring and Dr. Bridges.

'A man of tact and firmness to settle the matter' suggested.

"It is now some months since we made passing allusion to the abnormal and not very creditable state of our official arrangements in the little island of Hongkong. The subject has, as we then predicted, gradually forced itself upon the public attention; certain keen-sighted grievance-hunters of Sheffield have made it the ground of a public meeting and a Parliamentary petition; and the inhabitants of Tynemouth have shown curiosity upon the matter, and have backed the petition of the Cutlers. The makers of sword blades and the builders of ships feel a natural interest in elements of disturbance happening far away, and Hongkong has once again been honoured by a mention in the Imperial Parliament. The sound of the name in our Parliamentary proceedings never bodes good to our national interests. It is always connected with some fatal pestilence, some doubtful war, or some discreditable internal squabble; so much so that, in popular language, the name of this noisy, bustling, quarrelsome, discontented, and insalubrious little island, may not inaptly be used as an euphemous synonym for a place not mentionable to ears polite. We cannot wish that the sea should take it back again to itself, because English lives and English property would be endangered; but, if these could be withdrawn, we should very willingly resign any benefits which we derive from its possession, to be relieved of the inconveniences which it forces upon us. Lord Malmesbury in the Lords, and Sir E. Lytton in the Commons, seem thoroughly to have sympathized with the tone in which we treated this last difficulty when it arose. It is a troublesome, vexatious, and paltry affair, imposing upon everybody a great deal of trouble for a totally inadequate object, and with the promise of a most unsatisfactory result.

At the date of the last advices every official man's hand in Hongkong was against his neighbour, and, as that important dependency of the British Crown is distressingly complete in its official staff, the hostilities are more difficult to remember than the intestine wars of the Seleucidæ or the politics

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of the Italian Republic. There is a Governor, a Lieutenant-Governor, a Chief Justice, an Attorney-General, an acting Attorney-General, a Council, a Colonial Secretary, a Registrar and Protector of Chinese, a Colonial Treasurer, and others "too numerous to mention." The officers are all criticized, represented, or calumniated by some six newspapers, whereof we believe that at least one has a daily issue, and no one restricts itself to a single weekly appearance. The island, in which these agencies work and boil over, is considerably less than the Isle of Wight, and the inhabited portion might all be put into Hyde Park. When we last heard of this amiable community, the Governor had run away, to seek health or quiet in the Philippines; the Lieutenant-Governor was at issue with Mr. Tarrant, of *The Friend of China*, on account of Mr. Tarrant's persistent accusation that the Lieutenant-Governor had, at some remote period, encouraged or protected his servant in "squeezing" the Chinese; the Attorney-General was suspended for bringing certain charges against the Registrar; the acting Attorney-General had been worried to death, and another was succeeding to his perilous office; the Colonial Secretary was absent, but the acting Colonial Secretary was undergoing accusations of having, while uniting in himself the somewhat incongruous duties of a private barrister and Colonial Secretary, given his clients the benefit of his official position and having destroyed papers which compromised a notorious offender; the Colonial Treasurer was being cross-examined in a witness-box as to the pressure he had put upon *The Daily Press* when he had the editor in prison; the Registrar and Protector of Chinese had accumulated upon his head all the accusations that can be reasonably brought against any one man, from piracy on the high seas down to brothel-keeping; the newspaper proprietors were all more or less in prison, or going to prison, or coming out of prison, on prosecutions by some one or more of the incriminated and incriminating officials; and the Chief Justice was trying an action against the Governor.

We are now about to attempt an analysis of those papers which Sir Bulwer Lytton produced amid the respectful discouragement of the British House of Commons. Produce them, or even print them as we may, their contents will never be thoroughly known to any one, but the reader of the Queen's Printer's printing office, to whom they might afford a plausible ground for an application to increase his salary. They form an imbroglio which no man desires to unravel, and they conceal a secret history which no one wishes to discover. No doubt, there are faults in all these official people. There are faults in the imperfectly-regulated energies of Mr. Chisholm Anstey, for if those energies had been better regulated, they would have carried him very far clear of Hongkong. There are faults in the conduct of Sir John Bowring, for it is a fault in any man not to make himself popular in a community of English merchants. There is a fault in the position of Dr. Bridges, at once Colonial Secretary and the counsel of such men as Ahlum the baker, and Ma Chow Wong, the convicted pirate. There is a fault also in the position of Mr. Caldwell who is allied by marriage to the Chinese population and who, therefore, never can disabuse the Chinese of the notion that he is as one of them, and can be acted upon as they are acted upon. But then we must expect to find faults in every public man, and persons who are necessitated to "go to Hongkong" * are not exempt from the general infirmity. As to the Hongkong Press, which every one is using, prompting, disavowing, and prosecuting, the less we say of it the better; for we could say nothing of it that would at all tend to the credit of our profession.

Any attempt to deal judicially with this congaries of intrigues, accusations, and animosities here in England must signally fail. We cannot do justice at the Antipodes while cartloads of evidence are arriving by every post and local

* Evidently by this quotation the writer had in view the words of the well-known and, at one time, popular song "You may go to Hongkong for me."

information is wanting to the judges. It is a case for a dictator. It would be better to send out some sensible man with power to mediate, and, failing mediation, with authority to judge. A man of tact and firmness would settle the matter in a week, but he ought to be empowered to leave behind him the menace that the first person who recommences this state of official chaos shall be at once dismissed. We cannot be always investigating a storm in a tea-pot, wherein each individual tea-leaf has its dignity and its grievance."

Sir Edward Lytton's despatch dismissing Mr. Anstey.

As may be judged from the debate in the House of Commons before noticed, the Secretary of State had, at this time, fully considered the question of the suspension of Mr. Anstey, which, no one could ever have imagined would end otherwise than in being confirmed. Sir Edward Lytton, in a despatch to Sir John Bowring, dated the 17th March, set out his reasons for coming to the decision that Mr. Anstey should be dismissed from his post. Founding his decision, as will be seen, upon the first act in the drama of the disgraceful episodes, the Secretary of State considered that, quite apart from the 'unfounded charges' which Mr. Anstey had brought against the Registrar-General, there were other grounds which made his dismissal necessary. Sir Edward Lytton then commented upon what he considered should be the special function of an Attorney-General and the differences of Mr. Anstey 'year after year' with other officials and the local Government which made his removal imperative, showing that Sir John Bowring's raking up of everything unfavourable that he could possibly think of in reference to Mr. Anstey in his now famous despatch, had not escaped attention. He concluded, as foreshadowed by *The Times*, by saying that "the unfortunate condition of the public service in Hongkong" would be fully investigated "by the new Governor on his arrival." The despatch is of such an important nature that no apology is offered for reproducing it in full and as worthy of preservation:—

'The Secretary of State takes no notice of accusations against a public officer in a Colony unless they come before him through the Governor.'

'The Attorney-General is an officer whose especial function is to render counsel and assistance to the local Government.'

The unfortunate condition of the public service in Hongkong to be inquired into by the new Governor.

Sir, Downing Street, 17th March, 1859.

I have had under my consideration your despatches of the dates and numbers specified in the margin, relating to the proceedings which have terminated in the suspension of Mr. Chisholm Anstey from the office of Attorney-General. I have also considered the representations of Mr. Anstey himself, in the letters addressed to me, of which the dates are also added in the margin. Although some of these have not been properly brought to my notice, inasmuch as the Governor and the Executive Council have not had the opportunity of examining and commenting on them, and others contain more of recrimination and attack on other parties than of defence of Mr. Anstey himself, yet considering him in the light of a party placed on his defence, I have been anxious to give him all the benefit which he could derive from the statements contained in them.

It appears from these documents that Mr. Anstey made several specific and very serious charges, involving not only violation of official duty, but grossly immoral conduct, against the Registrar-General, Mr. Caldwell, at first in his place in the Legislative Council, afterwards in his letter of 13th May, 1858, to the acting Colonial Secretary, and that addressed to Lord Stanley on the 17th May, but communicated to the same officer. A Commission of Inquiry was nominated to report on those charges. The Commission reported that

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some portion of them (comparatively unimportant) was proved; that although some other charges were not proved, yet Mr. Anstey was not without reason for bringing them forward; and others, and those among the most serious of all, were not only unfounded, but there existed no reason whatever for advancing them.

Such a report constituted of itself a most serious charge against Mr. Anstey. And the Executive Council, by their finding on the subject, substantially adopt the view of the Commission; and were further of opinion that Mr. Anstey should be suspended from office, which was done. Mr. Anstey complains, as I understand him, that he had not due opportunities of defence, and, moreover, that he was turned into an accuser in this case against his own will. On the first point, I shall only say that ample opportunity of defence appears to have been afforded him. As to the second, I agree with yourself and the Council in thinking that Mr. Anstey having thought proper to bring forward charges of this nature against a fellow-officer in a formal and official manner, had no right to shrink from the responsibility of supporting them before a Commission summoned by the proper authorities, and to the competency of which no reasonable objection could be taken.

It is necessary, however, that I should remark on one further argument of Mr. Anstey, because it relates to the functions of this department. One of the reasons on which he appears to rely as justifying him in not pursuing the case against Mr. Caldwell before the Commission is, that he, Mr. Anstey, had brought the charges against that gentleman before the Secretary of State, and was expecting the Secretary of State's decision. Mr. Anstey cannot be ignorant that he had no right whatever to bring those charges before the Secretary of State as from himself; and that if he thought proper to do so, instead of following the legitimate course of addressing them to the Governor, it was no part of the functions of the Secretary of State to entertain them. The Secretary of State takes no notice of accusations against a public officer in a Colony, unless they come before him through the Governor, and appear to him, when thus officially placed under his notice, to require such investigation. Mr. Anstey had also express warning from the Governor (as reported in your despatch of the 18th May, 1858), that these charges were referred to the Commission, and it is not too much to say that he must take the consequences of deliberately neglecting that warning.

Agreeing with the Commission of Inquiry that the charges have failed, and with the Executive Council that the failure of these charges, considering the reckless spirit of hostility in which many of them were brought forward, renders in itself Mr. Anstey unfit to continue in office, I have accordingly advised Her Majesty to dismiss him from his post.

But I am bound to add, that this dismissal would have been necessary on other grounds, which the documents before me only too clearly disclose.

The Attorney-General is an officer whose especial function it is to render counsel and assistance to the local Government. If he fails in the discharge of this duty either wilfully or through incompetency, his dismissal is required; not, necessarily, as a punishment, although it may be deserved in this sense also; but because the local Government must not be deprived, through his ignorance or his perverseness, of the requisite assistance. Nor is it enough that the law adviser may be able to show that he has in strictness performed his formal duties, by doing the legal business in which he may have been retained. His functions are much more extensive, more important, and more delicate than these. The local Government must have the benefit of his general assistance on the many points on which a lawyer's counsel is constantly required. But if a law adviser sets himself in constant opposition to the local Government; if he is prodigal of accusations, urged in every way accessible to him, against other officials; if he takes on himself to judge and act in opposition to the Governor, as, for instance, in resigning his post as Ma-

gistrate (which it may be very useful that a law adviser should hold), because he does not choose to sit on the Bench with a fellow justice whom the Governor has acquitted of charges brought against him; if he constantly uses himself, and encourages in others, a tone of bitter hostility towards individuals with whom he is displeased, and of gross disrespect towards higher officers and the Governor himself; his removal becomes an imperative duty on his superiors. And it is quite needless for me to do more than refer to the contents of the mass of papers before me, and to the reports which my predecessors have unfortunately had to entertain year after year, of the differences of Mr. Anstey with other officials, as well as with the local Government, as evidencing only too abundantly the application of these remarks to the conduct of that gentleman.

I do not consider this the proper occasion to take notice of the various considerations raised by these papers as to the conduct of other parties, and as to the unfortunate condition of the public service in Hongkong, at the present time. But these matters will not fail to have my serious consideration; and I consider it essential that they should be fully investigated by the new Governor on his arrival.

I have, etc.,

(Signed) E. B. Lytton.

Governor Sir John Bowring.

Naturally, a man of Mr. Anstey's activity would not rest satisfied with such a complete discomfiture to himself as the above despatch proved to be, and it will be seen later on how through his own energy and determination he brought about not only Mr. Caldwell's dismissal,* but a very modified tone as to the real reason for his removal from the service as well as an acknowledgment of the services he had rendered to the Colony.† But otherwise, taken with the discussions in both Houses of Parliament as before alluded to, this despatch was as plain a recall of the Governor, Sir John Bowring, as well could be, and it was high time that notice had been taken of the state of affairs prevalent in Hongkong.

A plain recall of Sir John Bowring.

The Naval Commander-in-Chief, Rear-Admiral Sir Michael Seymour, left Hongkong in H.M.S. *Calcutta*, on the 19th March, carrying with him the best wishes of the community and a presentation of plate of the value of two thousand guineas with an appropriate address. He had been nearly three years on the station ‡ His position had been one of no slight difficulty, especially at the commencement of hostilities with China, when, in ignorance of the views of Her Majesty's Government, he blockaded the Canton river with a small force ill adapted for the purpose. On the 17th March, prior to his departure, Sir Michael Seymour wrote to the Governor recording "his sense of the important services rendered by Mr. Caldwell on the numerous occasions he accompanied Her Majesty's ships against pirates."

Departure of Admiral Sir M. Seymour.

The community present him with an address and a piece of plate of the value of 2,000 guineas.

Admiral Seymour records his sense of Mr. Caldwell's services.

* See Vol. II., Chap. XXXV.
† See Vol. II., Chap. XXXVI.
‡ *Antè* Chap. XIV. § II., p. 342.

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Admiral Hope succeeds Admiral Seymour.

Sir Michael Seymour was succeeded by Rear-Admiral Hope, who reached Hongkong on the 28th April.

Return of Mr. Pollard as a barrister.

On the 10th April, Mr. E. H. Pollard, who had proceeded to England for the purpose of getting admitted to the English Bar, returned to the Colony, having been called to the Bar by the Honourable Society of the Middle Temple the year before.

Temporary removal of the Magistracy to Pedder's Hill.

At this date, the Assistant Magistrate's Court was removed to the building on Pedder's Hill, formerly occupied as the Civil Hospital. This removal was only to be temporary, pending the reconstruction of the very inconvenient Courts.*

Hongkong affairs again before Parliament.

Motion of Mr. Edwin James for production of papers.

At this period the affairs of Hongkong again attracted the attention of Parliament. On the 14th April, Mr. Edwin James moved for the production of copies of all correspondence, Judges' notes, or other papers, on the following subjects, or any of them :—

1. The resignation of the Justiceship of the Peace for Hongkong by Mr. Thomas Chisholm Anstey, sent in to the Local Government on the 13th day of May, 1858 :

2. His suspension on the 7th day of August, 1858, from the Attorney-Generalship of the Colony of Hongkong, and from the office of Counsel of the Superintendency of Trade in China :

3. The case of the Queen *v.* Tarrant for libel, tried at the November Sessions (1858) of the Hongkong Supreme Court (Criminal side) :

4. The charge of alleged complicity of Mr. Caldwell, J.P., and the Protector of Chinese at Hongkong, with Hongkong pirates :

5. The charges made against the acting Colonial Secretary (Dr. Bridges), with reference to the foregoing subjects, and also the Opium Farm monopoly :

6. The charges made against the Lieutenant-Governor of Hongkong (Colonel Caine) and his Chinese compradore, with reference to extortion and bribe-taking, in the years 1846 and 1848 :

7. The proceedings against Mr. May, Superintendent of Police at Hongkong, Mr. Tarrant, Registrar of Deeds there, and the Police Court Interpreter Tong Akou, and the dismissal of the Police Court Interpreter Assam,‡ for having severally given evidence against the said parties, or any of them :

8. The Imperial regulations (if any) by which the several suspensions or removals before mentioned were authorized.

These were in due course duly produced, and, as will be seen hereafter, availed of by all interested.†

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* On the subject of the Police Courts, see *antè* Chap. XI., p. 237, and *post* Chap. XXX.

† On this subject, see also Chap. XXXI., *infrà*.

‡ ? Assow—see *antè* Chap. XXIII., pp. 508, 529 § 66.

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The following letter at this stage from the Secretary of State to Mr. Anstey on the subject of his suspension, and the "sincere regret with which he had found himself obliged to confirm" same is not inappropriate :—

Letter from the Earl of Carnarvon to Mr. Anstey expressing 'sincere regret' at the confirmation of his suspension.

Downing Street, 16 April, 1859.

Sir,

I have to acknowledge your letter of the 14th instant, respecting your suspension from the office of Attorney-General at Hongkong. It contains some expressions which render it necessary for me to explain the object with which my letter of the 13th (to which it is an answer) was written.

While Sir Edward Lytton was anxious to express the sense which he entertained of your talent and energy, and the sincere regret with which he had found himself obliged to confirm your suspension, it was not his intention to imply that the proceedings of the Governor and Executive Council were unjust or arbitrary, or to indicate any general dissent from the grounds on which they acted. It would be unfair, both to them and to yourself, that any misapprehension should be allowed to exist on this point. I cannot undertake to return any answer to your request for re-employment in the Colonial service of this country ; but the application shall be laid before Sir Edward Lytton, as soon as the state of his health allows him to resume the ordinary transaction of business.

I have, etc.,

(Signed) CARNARVON.

T. C. ANSTEY, Esq.

Concerning the agitation which had now commenced in England, regarding affairs generally in Hongkong, *The Morning Herald* of the 28th April contained a strong article upon the existing discreditable state of things. Sir John Bowring not unnaturally came in for a share of the invective levelled at some of the authorities for having allowed things to reach the scandalous stage they had. The paper in question said :—

*The Morning Herald* on Sir John Bowring and the discreditable state of affairs.

'An empty-headed, malevolent, lying, political quack like old Bowring.'

"... We are pleased to learn that Lord Lyndhurst supported by Lord Brougham will bring the matter forward in the House of Lords as soon as practicable. Mr. Edwin James again makes the motion in the Commons, and unless the Ministers wish to establish the principle that the subordinate officers of Government in distant parts can bend the law unto their will, reducing iniquity to a system, and still enjoy immunity, we should say they must afford the House the fullest satisfaction and information. Sir Bulwer Lytton's jokes will not do again.

It is annoying to see an empty-headed, malevolent, lying, political quack like old Bowring drawing upon himself such notoriety. True it is unenviable but that makes no difference to him ; for being as unscrupulous as Louis Napoleon, and having about as much idea of propriety as Titus Oates, our opinion is he would be in bliss in a pillory so long as none of the by-standers threw anything hard at him."*

It may be interesting to note at this stage that *The Morning Herald* was a paper with which Mr. Adams, Mr. Anstey's suc-

Mr. Anstey's successor as Attorney-

* As to Sir John Bowring, see the previous extract from '*The Journal of T. Raikes, Esq.*,' and the similarity of language there used—*antè* Chap. XVI. § II., p. 387.

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1859. General, Mr. Adams, connected with *The Morning Herald.*

Arrival of Mr. H. C. Caldwell, a brother of Mr. D. R. Caldwell, from London.

Previously Registrar of the Recorder's Court at Singapore and a fugitive defaulter.

A backed criminal warrant in the hands of the Superintendent of Police.

He is allowed to depart for Macao.

Mr. Anstey's report to the Secretary of State.

On the 2nd June, 1859, a brother of the now famous Mr. D. R. Caldwell, the Registrar-General and Protector of Chinese, named Henry Charles Caldwell arrived in Hongkong from London by the ship *Northfleet.* He had previously been Registrar of the Recorder's Court at Singapore and was a fugitive defaulter from there, having some years before embezzled trust-moneys in his official capacity. Ever since his detection in 1856-1857 a backed criminal warrant from Singapore had been lying in the hands of the Superintendent of Police at Hongkong for execution at the moment of his expected arrival in the Colony, his wife and family having preceded him. Yet on Mr. H. C. Caldwell's arrival, not only was he not arrested but actually allowed to depart out of the jurisdiction the same night for Macao, where his brother, Mr. D. R. Caldwell, had previously obtained a residence for him and where he was to carry on the business of a notary and general agent amongst the Chinese. By what influence Mr. H. C. Caldwell was thus allowed to escape the meshes of the law is not apparent, but suffice it to say that the matter did not escape Mr. Anstey, who at once brought it to the notice of the Secretary of State.‡ The local press also took up the subject in strong terms, but Mr. H. C. Caldwell was allowed the greatest immunity from any possible interference.

Mr. H. C. Caldwell afterwards as an attorney of the Supreme Court of Hongkong.

How he got out of his difficulties and whether he or others on his behalf 'compounded his felony' is enveloped in mystery, but he eventually found his way back to Hongkong and entered the office of Messrs. Cooper-Turner and Hazeland, solicitors; then he articled himself to Mr. R. C. Owen, the barrister (who under the provisions of Ordinance No. 13 of 1862 had elected to act as an attorney), being admitted some years after as an attorney and solicitor of the Court. He soon made for himself a lucrative practice and became one of the leading solicitors in Hongkong. Another of the wonderful incidents in regard to the history of this Colony. Mr. H. C. Caldwell having amassed a competency retired to England, and died at his residence at Twickenham, England, on the 28th June, 1883, at the age of sixty-eight.

Mr. Anstey's pamphlet 'Civil Government at Hongkong.'

After publishing a pamphlet entitled "Civil Government at Hongkong" and otherwise continuing to agitate in England and endeavouring to enlist sympathy as to the unfair treatment

* See Chap. XXIX., *infrà.*
† See Vol. II., Chap. XLIII.
‡ *Parliamentary Papers*, 1860, pp. 445, 448.

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He proceeds to India and joins the local bar.

Mr. Anstey's return to England on Mr. Caldwell's dismissal in 1861.

he considered he had received, a Home paper advising him to re-enter Parliament and 'badger Lord Palmerston,'—Mr. Anstey left England for Calcutta, *viâ* the Cape, in November, 1859. From Calcutta Mr. Anstey proceeded to Bombay where he joined the local Bar. Fresh investigations instituted in 1861, by the new Governor, Sir Hercules Robinson, under instructions, ultimately led, as will hereafter be seen, to the dismissal of Mr. Caldwell, the Registrar-General, from the Government service, when Mr. Anstey, doubtless considering that his chance had again arrived for renewing the agitation of the past and 'badgering' the Colonial Office, returned to England.

# CHAPTER XXVII.

## 1859.

Departure of Chief Justice Hulme on sick leave.—He anticipates a pension.—Mr. Green, acting Chief Justice.—Mr. Kingsmill, acting Attorney-General.—The Chief Justice's residence and the sale of his furniture. —His departure regretted.—The most trying period of his long service in Hongkong.—His position as a member of the Legislative Council and as regards Sir John Bowring.—Return of Mr. Alexander, the Registrar from leave.

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Departure of Chief Justice Hulme on sick leave.

MR. HULME, the Chief Justice, who had been in very infirm health after many years service in the Colony, left for England by the mail steamer *Cadiz* on the 24th April. His last return to the Colony from leave in England was on the 2nd April, 1855.* He had applied some time back to be relieved, but, receiving no reply, deemed it best to proceed to Europe at once, having obtained eighteen months' leave of absence, on medical certificate, although not intending to return and anticipating the grant of a pension which, however, by the terms of his appointment, he was not entitled to.† On the 23rd April, Mr. Green, the acting Attorney-General, was accordingly gazetted his interim successor, Mr. Kingsmill replacing Mr. Green. The Chief Justice, it may be remarked, lived at "Spring Gardens," and the sale of his furniture by "Lane, Crawford, and Co., auctioneers," took place after his departure on the 26th April. Mr. Hulme's departure, as on previous occasions, was the subject of much regret, and a remarkable fact in connexion with his tenure of office for the last time and during perhaps the most trying period of his long service in Hongkong was, that he had managed to keep aloof from all the discussions, dissensions, and otherwise disgraceful scandal which had taken place and had lasted so long, preserving an attitude of utter indifference and of non-interference in keeping with the whole of his honourable career in the Colony. As a member of the Legislative Council his position was often as irksome as it had been an invidious one to him. That Sir John Bowring's administration had been 'wicked and corrupt,' as put by Mr. Anstey, there were very few who would have run the gauntlet of derision in attempting to deny. It is clear from the records that the Chief Justice had openly disapproved of many of Governor Bowring's public acts, and it is therefore astonishing

He anticipates a pension.

Mr. Green, acting Chief Justice.

Mr. Kingsmill, acting Attorney-General.

The Chief Justice's residence and the sale of his furniture.

His departure regretted.

The most trying period of his long service in Hongkong.

His position as a member of the Legislative

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* *Antè* Chap. XVI. § I., p. 359.

† *Antè* Chap. I., p. 43, *note*.—See also Chap. XXXI., *infrà*.

how he succeeded in avoiding all responsibility or connexion attached to them, considering his position in the Council, yet although he saw the administration reviled and bombarded, it is also abundantly clear from the records that he often considered he was in duty bound to the State to accord his support to the administration to which he was opposed.



The day after Mr. Hulme's departure, Mr. Alexander, the Registrar, returned to the Colony from leave of absence and resumed the duties of his office. He had been absent from the Colony ever since the 11th March, 1857,* having received extensions to his original leave.

Return of Mr. Alexander, the Registrar, from leave.

* *Antè* Chap. XVIII., p. 429.

# CHAPTER XXVIII.

## 1859.

Office of Her Majesty's Plenipotentiary and Superintendent of Trade in China separated from that of Governor of Hongkong.—The Honourable F. W. A. Bruce, Superintendent of Trade.—Mr. Hercules Robinson, Governor.—Mr. T. Wade, Chinese Secretary to the Legation at Peking.—Arrival of Mr. Bruce.—Superintendency of Trade removed to Shanghai.—Chinese interpretation more defective.—Early supersession of Sir John Bowring.—His departure.—Mr. Weatherhead takes leave.—Sir John Bowring's administration 'wicked and corrupt.'—Cold shoulder from the European community on his departure.—The Chinese present him with usual gifts.—The abuse heaped on him on his departure.—Colonel Caine, acting Governor.—Mr. Green takes the Bench for the first time as acting Chief Justice.—Dr. Bridges and law partnerships. His petition to the Legislative Council.—Ordinance No. 3 of 1859.—The appointment of Mr. Rennie, the Auditor-General, as a member of the Legislative Council confirmed.—Conviction and execution of Lo Chun Sun for piracy and murder.—Resignation of the Chief Magistrate, Mr. Davies.—Mr. W. H. Mitchell, acting Chief Magistrate.—Mr. May, acting Assistant Magistrate.—Mr. Jarman, acting Superintendent of Police.—Mr. Davies as a supporter of Mr. Anstey.—The reason for Mr. Davies' resignation.—Mr. Anstey's letter to the Secretary of State upon the subject.—Messrs. Cooper-Turner and Hazeland take over Mr. H. J. Tarrant's business.—Departure of Messrs. Tarrant and Stace for England.—Departure of Mr. Inglis, Harbour Master and Marine Magistrate.—Marine cases entertained by the Police Court.—Meeting at Newcastle and petition to the Queen upon Hongkong affairs.—Petition referred to the Secretary of State for the Colonies.—Additional Rules and Regulations for the Vice-Admiralty Court.—Chinese Passes.—Privy Council appeal. Labraik and Another *v.* Burrows.—Act 8 and 9 Vict. c. 89.—Act 12 and 13 Vict. c. 29.—Decision of Chief Justice Hulme reversed.—Act 22 and 23 Vict. c. 9.—Jurymen leaving the Court without permission. Order of Court.—Government Notification.—Death of Mr. John Smithers, Usher of the Supreme Court and Clerk and Sexton to St. John's Cathedral.

Ch. XXVIII.

Office of Her Majesty's Plenipotentiary and Superintendent of Trade in China separated from that of Governor of Hongkong.

RUMOURS of immediate and important changes in the administration of affairs in Hongkong now assumed practical effect. The office of Her Majesty's Envoy Extraordinary and Minister Plenipotentiary and Chief Superintendent of Trade in China was separated from that of Governor of Hongkong, the former being conferred upon the Honourable Frederick W. A. Bruce, C.B., formerly Colonial Secretary of Hongkong, and who had left the Colony in June, 1846, on appointment as Lieutenant-Governor of Newfoundland,* and the latter on Mr. Hercules Robinson, the Lieutenant-Governor of St. Christopher, in the West Indies.† At the same time Mr. Thomas Wade received the appointment of Chinese Secretary to the British Legation at Peking.

The Honourable F. W. A. Bruce, Superintendent of Trade.

Mr. Hercules Robinson, Governor.

Mr. T. Wade, Chinese Secretary

Mr. Bruce arrived on the 26th April in H. M. S. *Magicienne*. His commission as Her Majesty's Envoy Extraordinary and

* See *antè* Chap. II., p. 47, and Chap. III. § III., p. 97.

† "Served for some time in the 87th Fusiliers; on his retirement from the Army was actively engaged during the Irish famine, 1846-9, under the commissioners of public works and poor law board in Ireland: chief commissioner to inquire into the fairs and markets of Ireland, 1852; President of Montserrat, 1854; Lieutenant-Governor of St. Christopher, 1854, with which he held the dormant commission of Governor-in-chief of the Leeward Islands."

Minister Plenipotentiary and Chief Superintendent of Trade was published on the 30th April, and he landed officially on the 2nd May.

to the Legation at Peking.

Arrival of Mr. Bruce.

On his assuming charge of the Superintendency of Trade, the head-quarters thereof were at once removed to Shanghai, which had the effect of making the question of defective interpretation in the Colony more pressing than ever. Up to this, the Colony could always fall back upon the Consular service for good interpretership, when that was absolutely necessary in special cases, and more particularly for the correction of publications in Chinese, but now that that resource was removed, the question had increased to one of considerable difficulty. There were at this time only three men in the service, excepting Mr. Lobschied, the Inspector of Schools, who were acquainted with the Canton dialect, and only one of these, Mr. Dick, the Interpreter to the Supreme Court, was at all acquainted with the written language and that imperfectly. Neither Mr. Caldwell nor Mr. Inglis, the Harbour Master, who had paid special attention to the study of Chinese, professed any knowledge of the written language, and the latter, moreover, had special duties to attend to.

Superintendency of Trade removed to Shanghai.

Chinese interpretation more defective.

After the discussions in both Houses of Parliament and the Secretary of State's despatch of the 17th March last upon the "unfortunate condition" of affairs in Hongkong and the early arrival of the new Plenipotentiary, which, judging by dates, implied nothing short of the practical recall and early supersession of Sir John Bowring, and, moreover, showed that the matter had been under consideration for some time, and before the resolutions of both Houses of Parliament, there was nothing left for Sir John Bowring to do but to take his immediate departure from the Colony. He accordingly left on the 5th May for England by the mail steamer *Pekin*, accompanied by one of his daughters who had remained behind on Lady Bowring's departure. By the same boat, Mr. Weatherhead, clerk of the Supreme Court, also went on leave. Besides Mr. F. W. Mitchell, Mr. Weatherhead had also, during Mr. Alexander's absence on leave, acted for a time as Deputy Registrar.

Early supersession of Sir John Bowring.

His departure.

Mr. Weatherhead takes leave.

Of Sir John Bowring's administration, the less said the better. It was, in the legal sense of the term, a "wicked and corrupt administration," feebleness and incapacity, to say the least, being by no means its worst features, as the past records have disclosed, and which will ever reflect discredit on Hongkong. In contrast to past Governors and other high officials of Hong-

Sir John Bowring's administration 'wicked and corrupt.'

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Cold shoulder from the European community on his departure.

The Chinese presented him with usual gifts.

The abuse heaped on him on his departure.

kong who, on their departure from the Colony, had always been loaded with testimonials, a thoroughly Oriental custom by the way and for which, as has before been noticed, the Colony has been famous.* Sir John Bowring was allowed to take his departure with a cold shoulder from the English community, though two deputations of Chinese waited on him and presented him with the usual gifts. He now returned to England full of years, though by no means of bodily infirmity, being close upon his seventieth year and after spending ten years in China. On his departure the local press heaped upon him abuse of a nature which would not bear repetition. It may be doubted whether it would have been possible to have had a worse man at the head of the local administration.†

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* *Antè* Chap. XIX., p. 444.

† Not many months after his return to England, Sir John Bowring re-married as the following press notice shows: "Marriage. On the 8th November, 1860, at the Unitarian Chapel, Bristol, by the Reverend B. Apsland, Sir John Bowring to Miss Deborah Castle, daughter of Michael Hinton Castle." Many were the jocular remarks passed at the time upon this interesting event. On his departure from the Colony, his youngest daughter, Emily, joined the Italian Convent in Hongkong and assumed the name of Sister Aloysia on taking vows as a Sister of Charity. She was well known and universally respected, dying at the Convent in Hongkong on the 20th August, 1870, at the age of thirty-seven. Sir John Bowring died at Claremont, Exeter, on the 23rd November, 1872, at the age of eighty.

After Sir John Bowring's death, Mr. Lewin Bowring, his son, published a very interesting volume as a memorial of his father. It contained first of all a brief account of his life, and then the autobiographical sketches: these were divided into 'Early Recollections,' 'Parliamentary Recollections,' 'Countries visited,' and 'Sketches of various celebrities.' With regard to this matter, and considering the feebleness of his administration and the scandal that will ever attach to it, it may not be inappropriate to reproduce at this stage a further sketch taken from the records of the time, dealing with Sir John Bowring's career* and which appeared after his death. The concluding portion, setting out that "Bowring's tenure of office in China did not bring him popularity" was perhaps all that the writer probably deemed it advisable to say in reference to that portion of his career.

"Sir John Bowring was born at Exeter in 1792; his father was a fuller, who prepared woollen goods for foreign markets, and especially for that of China, the monopoly of which was in the hands of the East India Company. The family were Unitarians in their religious opinions and, like most Nonconformists in those days, Liberals in politics. On leaving school, John entered a merchant's office, and, during the first four years of his employment as a clerk, laid the foundations of his linguistic attainments. 'He learnt French from a refugee priest, Italian from itinerant vendors of barometers and mathematical instruments, while Spanish and Portuguese, German and Dutch, were acquired with the aid of some mercantile friends. These six languages he spoke with fluency, but, his son adds,—Having the quick ear and ready apprehension which constitute the linguist, he soon found himself able to converse with facility in the native tongue of any country which he visited. He had a fair acquaintance with Danish and Swedish, and acquired a book knowledge of Russian, Servian, Polish, and Bohemian, which enabled him to translate the productions of writers in those languages. He learnt a little Arabic during his journey in the East; and, when an old man, mastered a good deal of that difficult language, Chinese, to which he devoted much attention.' Hood once addressed him as follows:—

To Bowring! man of many tongues,
(All over tongues, like rumour)
This tributary verse belongs
To paint his learned humour.
All kinds of gab he knows, I wis,
From Latin down to Scottish—
As fluent as a parrot is
But far more Polly-glottish.
No grammar too abstruse he meets,

Three days before Sir John Bowring left, on the 2nd May, Colonel Caine was invested with the provisional Government of the Colony pending the arrival of Mr. Hercules Robinson, the new Governor.

Ch. XXVIII. 1859. Colonel Caine, acting Governor.

At a sitting of the Supreme Court in its Summary Jurisdiction on the 7th May, the acting Chief Justice, Mr. Green, took the Bench for the first time. The cause list was unusually heavy, lawyers being retained on both sides in all the cases.

Mr. Green takes the Bench for the first time as acting Chief Justice.

Dr. Bridges, feeling the hardship that section 3 of Ordinance No. 12 of 1858* relative to law partnerships, still inflicted a hardship upon barristers in the Colony, notwithstanding the

Dr. Bridges and law partnerships.

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However dark and verby,
He gossips Greek about the streets,
And often Russ—*in urbe*.
Strange tongues—whatever you do them call!
In short the man is able
To tell you what's o'clock in all,
The dial—ects of Babel.
Take him on change—in Portuguese.
The Moorish and the Spanish,
Polish, Hungarian, Tyrolese,
The Swedish or the Danish!
Try him with these and fifty such,
His skill will ne'er diminish
Although you should begin in Dutch,
And end (like me) in Finnish.

In 1811, Bowring proceeded to London as a clerk in the office of Milford and Co., and in connexion with this house he travelled during the next year or so in Spain and Portugal, and later on—still employed by the same firm—he visited Spain again, France, Belgium, Holland, Russia, and Sweden. 'During his long absence he formed the acquaintance in Spain of many well-known Liberals; in France he gained the friendship of Abbé Gregoire, Laroche, Thierry, Cuvier, Humboldt, and other prominent politicians and learned men; whilst elsewhere he met many illustrious literary characters, with whom during several years he maintained an active correspondence.' In 1822, a trip to Paris ended disastrously; for Bowring, being a man of great imprudence in speech, was thrown into prison at Calais, where he remained six weeks, and on his release was prohibited from again entering France—a prohibition which, of course, died away after the three glorious days of July, 1830. He began his literary career in 1821, by a pamphlet on slavery in Spanish, and in the next fifteen years he published several volumes of translations from Russian, Spanish, Polish, Magyar, etc.

In 1824, Jeremy Bentham conceived the idea of starting *The Westminster Review*, and Bowring was joint editor with Mr. Henry Southern, the former taking charge of the political, and the latter of the literary department. Readers of J. S. Mill's *Autobiography* will recollect that considerable dissatisfaction is there expressed with the way in which Bowring performed his task; and in the volume now under notice, there is nothing but the most casual mention of J. S. Mill, and he figures in no way amongst the celebrities whom Bowring describes. Although unsuccessful himself in commercial speculations, Bowring appears to have had a good head for business, and his forwardness and rather inquisitorial nature, added of course to his linguistic powers, suited him particularly for duties which the Government, much to its credit, found for him to perform. He was deputed in 1828 to Holland to examine the method pursued by the financial department in that country, and prepared a report, the first of a long series, on the public accounts of various European States. These papers, his son says, are "models of perspicuity, showing

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* The following was the section: "No barrister shall become or be in any wise interested in the profits of the business of any other practitioner-in-law, directly or indirectly, and whether under the name of law partner, or under any other name, under a penalty

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1859.

His petition to the Legislative Council.

amalgamation of the two professions, petitioned the Legislative Council upon the subject. The petition was received through the Clerk of Councils on the 23rd April. The acting Governor, at a meeting of the Council on the 18th May, laid the petition, of which the following is a copy, on the table:—

To

His Excellency the Governor in Legislative Council.

*The humble petition of* William Thomas Bridges, *Doctor of Civil Law, Barrister-at-Law, and Practitioner-in-Law, in the Colony of Honghong.*

Sheweth:—

That your petitioner has been informed that Ordinance 12 of 1858 is under consideration for its amendment at the present time before Your Excellency in Council.

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considerable power in grasping facts and in arranging them lucidly and intelligibly."

It was at this time that Bowring received his diploma of LL.D. from the University of Groningen.

"In 1831 he was associated with Sir H. Parnell in the duty of examining and reporting on the public accounts of France, a task which he performed with great ability; and shortly afterwards he was appointed a Commissioner with George Villiers (subsequently Lord Clarendon) for discussing the commercial relations between England and France. The negotiations, however, failed; and it was not till the time of Napoleon III. that a satisfactory treaty was effected. And he afterwards, with varying success, visited Belgium, Switzerland, and Italy, being deputed to inquire into the financial and trading prospects of these countries. In 1835 Dr. Bowring got into Parliament, was unseated in 1837, and finally sat for Bolton from 1841 to 1849. He was a staunch free-trader and a fluent speaker, but though a well-known man—a man perhaps of more notoriety than influence—he can scarcely be said to have been a success in the House. In 1848, the iron-trade in which Bowring had embarked his money was so depressed, that he became greatly embarrassed in his pecuniary affairs, and applied for, and obtained, through Lord Palmerston's friendship, the appointment of Consul at Canton. In 1854 he succeeded Sir George Bonham, with whom he could never agree, as Plenipotentiary; and he served in the East altogether more than nine years. It was on his return from China advanced in years and much broken in health, that he embarked on the ill-fated *Alma*, the scene of whose disaster is still pointed out to the voyager, on the Red Sea. The loss of an adventitious part of the Plenipotentiary's person on the shores of that desolate coast has amused many of the spectators of the *Overland Route* at the Haymarket, without causing much chagrin probably to the eminent knight himself. There was on board the *Alma* a certain Mr. G., of the Telegraph Department, and a popular member of the Oriental Club; and it is understood that his observant eye (long since closed in early death) marked out many little traits of character and points of incident of which Mr. Tom Taylor was allowed to avail himself. Bowring's tenure of office in China did not bring him popularity, but his Siam Treaty was a great success; and his conduct in connexion with the *Arrow* affair, though much canvassed at the time, seems capable of complete vindication....." *The Pioneer* (Paternoster Row), 1877.

The following is taken from *Chambers's Encyclopædia*, Vol. II. (1895), p. 374:—

Bowring, Sir John, born in Exeter in 1792, on leaving school entered a merchant's office, and there pursued that course of polyglot study whereby, as he afterwards boasted, he knew two hundred, and could speak a hundred languages. The national poetry of different peoples had special attractions for him, and he rendered great service to literature by translating both the more ancient and the more modern popular poems of almost all the countries of Europe. In 1821 he formed a close friendship with Jeremy Bentham, and in 1824 became the first editor of his radical *Westminster Review*, to which, as beseemed the descendant of an old Puritan stock, he contributed many articles on freedom in religion and politics, as well as on literary subjects. In 1828 he visited Holland; and his *Sketch of the Language and Literature of Holland* (1829) procured for him the degree of Doctor of Laws from the University of Groningen. Subsequent travels were undertaken by him, on a commission from the British Government, to inquire into the commercial relations of certain States. He visited Switzerland, Italy, Egypt, Syria, and finally the countries of the German Zollverein, and everywhere found materials for valuable reports. He sat in Parliament for Kilmarnock from 1835 to 1837, for Bolton from 1841 to 1849, and actively promoted the adoption of free trade. In 1849 he was

That it appears to your petitioner, that a great hardship has been inflicted upon your petitioner and other barristers-at-law, acting as local practitioners-in-law, by the third section of such Ordinance. Ch. XXVIII. 1859.

That such hardship consists in this, that whereas all other distinctions between barristers and solicitors are done away with, one is yet preserved, which admits of any number of solicitors or attorneys in partnership together, but denies the same right to such practitioners-in-law as are barristers in the mother-country.

That an injury is thereby inflicted both on the practitioner, and on the client, inasmuch as the barrister-practitioner is compelled, on absenting himself from the Colony for health or a visit to the mother-country, to break up altogether a business connexion which it may have been the labour of years to bring together, whereas the interests of the solicitor-practitioner can be looked after by the remaining partner or partners; and the interests of the client are also similarly affected, as those who employ barristers as their legal advisers must necessarily be compelled to transfer all their matters in hand to strangers; instead of continuing it in the same office under the superintendence of the *locum tenens* or successor of their original counsel.

That your petitioner confidently submits that no valid reason whatsoever can be adduced for making any distinction in this respect between either class of legal practitioners in this Colony, and as undoubted advantages have already resulted from the amalgamation of the two branches of the profession, it is but fair and reasonable that all restrictions upon that amalgamation should be done away with, unless valid and existing reasons can be shown to the contrary.

Your petitioner therefore humbly prays Your Excellency in Council to repeal the whole or so much of the third section of Ordinance 12 of 1858 as to Your Excellency and the Legislative Council shall seem meet.

And your petitioner, etc.,

(Signed) WILLIAM T. BRIDGES.

The same having been read, on the motion of the acting Chief Justice, seconded by the Colonial Secretary, it was ordered "to lie on the table."

The Ordinance to amend Ordinances No. 3 and No. 12 of 1858 was then read a second time, and the Council went into Committee upon it. Sections 1 and 2 being agreed to, the acting Governor moved, and it was carried, that the Ordinance do pass and that the title be "An Ordinance to amend Ordinances Nos. 3 and 12 of 1858," the same being numbered No. 3 of 1859. Dr. Bridges' application met with no success. At this meeting, the acting Governor also laid on the table a despatch of the Secretary of State relative to the protest of the unofficial

Ordinance No. 3 of 1859.

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turned in 1853, and in the following year was knighted and made Governor of Hongkong. In 1856, an insult having been offered to a Chinese pirate bearing the British flag (the 'affair of the lorcha *Arrow*'), Bowring, without consulting the Home Government, ordered the bombardment of Canton, a proceeding which excited grave dissatisfaction at Home, and nearly upset the Palmerston Ministry. In 1855 he concluded a commercial treaty with Siam, in 1858 made a tour through the Philippine Islands; and his accounts of those two visits are about the most readable of his thirty-six works. He retired with a pension

Ch. XXVIII. members of the Legislative Council, made at the meeting held on the 4th December, 1858,* against the appointment of Mr. Rennie, the Auditor-General, to a seat in the Council, and confirming the nomination.

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The appointment of Mr. Rennie, the Auditor-General, as a member of the Legislative Council confirmed.

At the Criminal Sessions held on the 25th May, Lo Chun Sim was sentenced to death for piracy and murder, the execution taking place on the 1st June.

Conviction and execution of Lo Chun Sun for piracy and murder.

Resignation of the Chief Magistrate, Mr. Davies.

The Colony had now to regret the loss of the Chief Magistrate, Mr. Henry Tudor Davies, who, for reasons best known to himself, having accepted office under the Chinese Government as Commissioner of Foreign Revenue (Customs) resigned his position in Hongkong on the 1st June, Mr W. H. Mitchell, being appointed to succeed him temporarily,† Mr. May replacing Mr. Mitchell as Assistant Magistrate, and Mr. Jarman acting as Superintendent of Police in the place of Mr. May. In Mr. Davies the Colony had lost a conscientious and painstaking official as well as an able and careful Magistrate. His relations with Mr. Anstey had always been of a friendly character, and Mr. Davies' independent spirit made him frequently, especially in the Legislative Council, an ardent supporter of Mr. Anstey.‡

Mr. Davies as a supporter of Mr. Anstey.

The reason for Mr. Davies' resignation.

Mr. Anstey's letter to the Secretary of State upon the subject.

Indeed, the immediate cause of Mr. Davies' resignation is said to have been due to his disgust with the service in Hongkong. Mr. Anstey, writing to the Secretary of State on the 17th May, 1859, stated that "in a very desponding letter he had just received from Mr. Davies," the latter had informed him of his reasons for resigning office, "and that," added Mr. Anstey, "my own fate, the iniquities of Hongkong, their prolonged impunity, and my final departure from the island, have led to his renouncing Her Majesty's Colonial Service, resigning all his posts at Hongkong, and proceeding to the North of China, where he had accepted a temporary office under the Emperor of that country, connected with the Customs; and where he would be freed from the corruptions and annoyances, which he most justly complained of at Hongkong." §

Messrs. Cooper-Turner and Hazeland take over Mr. H. J. Tarrant's business.

Departure of Messrs. Tarrant and Stace for England.

On the 8th June Messrs. Cooper-Turner and Hazeland advertized that they had taken over the business of Mr. H. J. Tarrant, solicitor and notary public, who together with Mr. Stace proceeded to England on the 5th July (the former for the

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* See Chap. XXV. § I., p. 564.

† As regards Mr. Mitchell's further movements in the service, see Chap. XXXI., *infrà* and Volume II., Chap. XXXVII.

‡ See also *antè*, Chap. XXV. § II., p. 573.

§ *Parliamentary Papers on Hongkong*, 21st March, 1860, p. 408.

purpose of getting called to the Bar in England. On the 22nd June, upon Mr. Inglis, the Harbour Master and Marine Magistrate, proceeding on leave, Mr. Newman was appointed to replace him, "Marine Police cases as on similar previous occasions being entertained by the ordinary Police Courts of the Colony."

Departure of Mr. Inglis, Harbour Master and Marine Magistrate.

During this month another meeting of the inhabitants of Newcastle took place, relative to the affairs of Hongkong. A petition was drawn up, signed by the Mayor and others, and forwarded to the Queen.

Meeting at Newcastle and petition to the Queen upon Hongkong affairs.

On the 2nd July a reply was received from Her Majesty to the effect that she had "commanded the said petition to be referred for the consideration of the Secretary of State for the Colonies."

Petition referred to the Secretary of State for the Colonies.

Additional Rules and Regulations for the several Courts of Vice-Admiralty abroad, established by Her Majesty's Order-in-Council, bearing date the 6th July, were published in the Colony on the 21st September. On the 19th July, it was notified that Chinese passes would, for the future, be required after 8 p.m., instead of 9 p.m., as recently.

Additional Rules and Regulations for the Vice-Admiralty Court.

Chinese Passes.

The Privy Council, on the 19th July, delivered judgment in the appeal case of Lapraik and Another, appellants, *v.* Burrows, respondent. The appeal was from a sentence of the Vice-Admiralty Court of Hongkong made in a cause of possession, civil and maritime, promoted by the respondent, claiming to be owner of the ship *Australia*, against the appellants, resident in the Colony, the registered owners, and at that time in possession of the ship. The Vice-Admiralty Court decreed possession to the respondent on the sole ground that the Act 8 and 9 Vict. c. 89 for the registration of British ships, made applicable to foreign ships by Act 12 and 13 Vict. c. 29, had not been complied with. The Privy Council reversed the decision of Chief Justice Hulme.*

Privy Council appeal.

Lapraik and Another *v.* Burrows.

Act 8 and 9 Vict. c. 89.

Act 12 and 13 Vict. c. 29.

Decision of Chief Justice Hulme reversed.

The Act 22 and 23 Vict. c. 9, providing for the discharge of the duties of the Chief Superintendent of Trade during vacancy of office or absence, was passed on the 8th August.

Act 22 and 23 Vict. c. 9.

Jurymen summoned and not actually sitting were in the habit of leaving the Court without permission, and inconvenience having been caused by that fact, by direction of the Court, the

Jurymen leaving the Court without permission.

* *See* 13 Moore P.C.C. 132.

Ch. XXVIII. 1859. Order of Court.

following notice was published in *The Government Gazette* warning the jurymen of the risk they ran in consequence :—

"NOTICE.

Gentlemen summoned to attend at the Supreme Court as Jurors are hereby notified, that they are not at liberty, without express leave of the Court (by Proclamation or otherwise) to consider their services dispensed with ; that they can ascertain whether their presence is required or not by applying to the Registrar of the said Court ; and that if they absent themselves without leave, they do so at the risk of being fined for such absence.

By Order of the Court,

(Signed) WM. HASTINGS ALEXANDER,
*Registrar.*"

16th August, 1859.

This notification by order of the then acting Chief Justice was ordered to be re-published on the 5th November.

Death of Mr. John Smithers, Usher of the Supreme Court and Sexton to St. John's Cathedral.

Mr. John Smithers, who had been Usher of the Supreme Court as well as clerk and sexton to St. John's Cathedral, died on the 6th September. He was, according to the records, much and deservedly regretted.

# CHAPTER XXIX.

## 1859.

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subscription raised on his behalf.—Incarcerated for over four months for Dr. Bridges' 'little bill.'—Mr. Tarrant's treatment.—The end of the scandalous affair.—A stigma upon the administration of Sir H. Robinson.—Mr. Tarrant and *The Friend of China* revived. Mr. Tarrant's death.

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Mr. W. H. Adams appointed Attorney-General, *vice* Anstey.

On the dismissal of Mr. Anstey by the Secretary of State, the Queen appointed Mr. William Henry Adams, who, along with Mr. Ingram, the proprietor of *The Illustrated London News*, was member for Boston in the late Parliament, to be Attorney-General of Hongkong. He was also Recorder for Derby and had voted with the Ministers in the division on the Government Reform Bill.* The following notice of his career is taken from *The Lincolnshire Times*, under the heading of "a self-made man :"—

His career.

> William Henry Adams, Esq., of Boston, in this county, the new Attorney-General for the Colony of Hongkong, has ascended the social scale to his present position thus :—Compositor, reader, reporter, sub-editor, editor, and newspaper proprietor, barrister, member of Parliament, and Colonial Attorney-General. Here is an example under our own eyes of what a man with moderate abilities, and a fair share of industry and energy, may accomplish in this much-abused aristocratic England of ours.

Arrival of the Governor, Sir Hercules Robinson, and of Mr. Adams.

Mr. Adams' appointment notified.

On the 7th September the Governor, Sir Hercules Robinson, (who had been knighted before leaving England) arrived in Hongkong by the P. & O. mail steamer *Malabar*, together with Lady Robinson and infant, as also did the new Attorney-General Mr. Adams, with his daughter Miss Adams. On the 9th it was notified that the Governor had assumed the duties of Government, his commissions being also published and bearing date the 22nd and 23rd June respectively. On the 9th September also appeared a Government Notification to the effect that "having reported his arrival in the Colony, Mr. Adams had been appointed Attorney-General by virtue of a warrant under the Royal Sign Manual."

Under orders from Secretary of State, he is appointed acting Chief Justice.

Mr. Green resumes acting Attorney-Generalship.

Supreme Court re-opens at 10 a.m.

On the same date appeared another notification that, "under orders from His Grace the Secretary of State for the Colonies, Mr. Adams, Attorney-General, had been appointed acting Chief Justice until further notice," and that Mr. Green had "resumed the office of acting Attorney-General held by him previously to the departure of Chief Justice Hulme." Almost his very first step on taking office was to order the Court to open at ten a.m., instead of at twelve, and sometimes one in the afternoon, as had hitherto been the case, owing principally to the illness and by order of Chief Justice Hulme.† Much interest was felt in Mr. Adams's first appearance in Court on the 12th September when he took the Bench for the first time at ten punctually.

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* Act 2 and 3 Wm. IV. c. 45.

† *Antè* Chap. XVI. § II., p. 394.

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The general consensus of opinion seems to have been one of confidence in his firmness and ability. He was described as being "elderly."

Mr. Adams' first appearance in Court.

How far audacity will carry some people was never more exemplified than when a Chinaman named Wong Aloong presented, on the 29th September, a few days after the acting Chief Justice's arrival in the Colony, a forged cheque for $300 in the name of Mr. Adams at the Oriental Bank. This attempt to victimize His Lordship was, however, soon frustrated by the Chinaman being taken into custody. Charged at the Criminal Sessions held on the 18th November with uttering the cheque knowing the same to have been forged, Wong Aloong was found guilty and sentenced to four years' imprisonment with hard labour. Mr. Adams had thus been afforded an early opportunity of judging of the character of the criminal classes of the Colony. One result of this case was that the defects in the law relating to bankers' cheques which were discovered at the trial were not long after remedied by the passing on the 16th April, 1860, of Ordinance No. 4 of 1860 amending the law relating to cheques or drafts on bankers and to amend the law of false pretences.

Forgery of the signature of Mr. Adams, acting Chief Justice.

Arrest of Wong Aloong.

Trial and conviction.

Mr. Adams afforded an early opportunity of judging the native character.

Ordinance No. 4 of 1860.

Almost the first case destined to be tried by the acting Chief Justice was one that had been the source of considerable scandal in the Colony for a number of years without any notice being, however, taken of the matter, and little, probably, did Mr. Adams think that as a Judge he would be instrumental, so soon after his arrival, in applying the 'new broom' which Hongkong so much required, although undoubtedly, by his appointment as acting Chief Justice under instructions from the Secretary of State, the authorities had in view the early retirement of Chief Justice Hulme and therefore intended that Mr. Adams, besides the Governor, should also have a hand in quelling the internal and disgraceful dissensions that had so long prevailed in Hongkong.

The first case destined to be tried by acting Chief Justice Adams.

Mr. Adams, besides the Governor, intended to apply 'the new broom.'

For the first time therefore since June, 1847, was a full, public, and important investigation now made into some of the floating accusations of Hongkong, namely, those repeatedly made by Mr. William Tarrant, the editor and proprietor of a local paper called *The Friend of China*, against Colonel Caine, since the suspension and practical dismissal of the former as alluded to at the period mentioned above, consequent upon charges made by him relative to Colonel (then Major) Caine's compradore. Those charges led to the institution of a charge of conspiracy against Mr. Tarrant, upon the advice of Mr. Campbell, then acting Attorney-General, for defaming Major Caine's character, but the charge, as will be remembered, was subsequently aban-

Investigation into repeated accusations made by Mr. W. Tarrant against Colonel Caine.

Chap. XXIX. doned,* though it led, as before stated, to the subsequent dis-
1839. missal of Mr. Tarrant from his position of Registrar of Deeds. A full account of this unfortunate affair had appeared in the local papers at the time and a by-no-means favourable view was taken of the mode of dealing with it by the Executive. The following is an account of the matter as published in the early days:—†

"Had the man (Major Caine's compradore) practised extortion in his own name the crime would have been less heinous, but he used the name of his master, thus bringing the character of public officers into disrepute among the Chinese, or rather convincing them that an English official was no better than a Chinese mandarin, it being notorious that the latter mainly depend upon bribes for a subsistence. The following literal translations from the books kept by the Clerk of the Central Market show that the compradore made an improper use of his employer's name, and that in so doing he endangered the character of the Colonial Secretary, not only among the Chinese but also among Europeans, as the matter was bruited about long before Mr. Tarrant had the courage to lay it before the head of his department:—

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|---|---|---|---|---|
| 21st | July, | 1845. | Paid Caine duty money, | $100 |
| 27th | „ | „ | Caine, paid (him) duty money, | $500 |
| 29th | „ | „ | Caine's duty—Rupees 455, | $200 |
| 1st | Aug. | „ | Paid Caine duty money, | $200 |
| 5th | „ | „ | Delivered Caine duty money, | $200 |
| 8th | „ | „ | Paid Caine duty (English money) | $300 |
| 11th | „ | „ | Caine duty money, | $100 |

At other dates there are entries for $100 and smaller sums. At the time these transactions took place Major Caine held the office of Chief Magistrate, and his compradore had sufficient influence to obtain his signature to a very high scale of market prices which was regularly published in the local papers, —the Magistrate, no doubt, believing that he was rendering the public a service.....

Mr. Tarrant was astounded at this revelation, and suspecting that Major Caine's name had been made use of to cover gross frauds, he requested Wei-A-foon (the partner of the lessee of the market) to repeat his statement to the head of the department, which he did in the same, or nearly the same, terms. While this was taking place in the office of the Surveyor-General the Treasury compradore came in threatening Mr. Tarrant with Major Caine's displeasure; and after the compradore left, the Major arrived himself, and had a long conversation with Mr. Cleverly. When a couple of days had elapsed Mr. Tarrant inquired of Mr. Cleverly whether anything was to be done in the matter; he was told that Major Caine was very angry, believing his compradore to be innocent and the charges perfectly groundless. Mr. Tarrant then wrote an official letter to Mr. Cleverly, being desirous that an investigation should take place lest at a future period it should be said that he had fabricated the story. A prudent, selfish man would have been quiet; a rogue would have felt no concern whether the charges were true or false; but as an honest man, Mr. Tarrant felt called upon to expose either a gross fraud on the part of the compradore, or malignant falsehoods put forth by Wei A-foon.

Unfortunately Major Caine took a view which was not to have been expected in a person of his experience and matured judgment. The charges

* *Antè* Chap. VII., pp. 143, 150, and Chap. VIII., p. 170, and subsequent references.

† See *The Friend of China*, 30th August, 1848; also a previous article *id.*, 24th August, 1847.

brought against his compradore were specific and serious; if guilty, he ought to have been punished; if innocent, his accuser Wei A-foon should not have been permitted to go scatheless. Had the compradore been put upon his defence the truth would have been elicited; and the verdict of a jury would either have substantiated the charges, or vindicated his character. This course was not pursued. Assuming that Mr. Tarrant charged him with acting in collusion with his compradore for fraudulent purposes, Major Caine prosecuted that gentleman criminally. Mr. Tarrant all along denied in an explicit manner that he wished to injure the reputation of Major Caine; on the contrary, he was doing him a good service by exposing the knavery of a person in whom he placed confidence. Mr. Tarrant was summoned to appear before the Chief Magistrate, and on the testimony of the two compradores (the very men who ought to have been put on their defence) he was committed for conspiring to injure Major Caine's character and held to bail to take his trial at the October sessions. Wei A-foon was examined as a witness for the prosecution before the Chief Magistrate, but his evidence was favourable to Mr. Tarrant, and two being required to constitute a conspiracy, he also was committed as a conspirator." *

Mr. Tarrant petitioned the Home Government and for three years waited to know whether they would confirm what he deemed a flagrant injustice. The Home Government did confirm his suspension,† and then Mr. Tarrant became an editor. From that time henceforth, labouring under the impression that he had been maligned and unjustly treated, he never ceased bringing the subject forward—for nearly twelve years did he keep the subject of his treatment constantly before the public, now petitioning the Governor, then the Chief Justice, upon the subject of his grievances. Some of his articles were libels, but still Major or Colonel Caine, Colonial Secretary or Lieutenant-Governor, permitted them to pass unnoticed,—his silence throughout resting upon the circumstance that he was in possession of Mr. Campbell's opinion, formed upon the inquiry held by him in 1847, justifying the course of action adopted by the Government at the time against Mr. Tarrant consequent upon his report as to the alleged malpractices of Major Caine's compradore.‡ As to the malpractices themselves, it would appear that certain Chinese in the employ or confidence of Major Caine, had pursued with success an extensive system of extortion in his name. His compradore was the principal actor in these operations. It was not for a moment believed that Major Caine connived at or was a participator in the nefarious practices, but the Chinese being under the conviction that he was the principal in the matter, it had the same effect as if he had really so been, the system pursued being represented as precisely coinciding with the mandarin style of 'squeezing.' Be that as it may, and

Major Caine's attitude consequent on being in possession of Mr. Campbell's opinion formed at the inquiry held by him in 1847.

* This is a mistake. Afoon, or as he is called above Wei A-foon, was never committed for trial. Mr. Tarrant was alone originally charged and committed, but "two being required to constitute a conspiracy," Afoon was subsequently brought up on *Habeas Corpus* to take his trial along with Mr. Tarrant. See the author's note, *antè* Chap. XII., § I., p. 288, *note*.

† See *antè* Chap. XI., p. 239.

‡ *Antè* Chap. VII., p. 143.

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Mr. Tarrant owed his dismissal from Government to Mr. Campbell.

Mr. Campbell's report produced after being suppressed for twelve years.

as a matter of fact, by whatever object actuated, it was through Mr. Campbell, of whom so much has already been recorded in this work, that Mr. Tarrant directly owed his dismissal from Government employ, as the following report,* produced at the trial of Mr. Tarrant, *twelve years after*, clearly shows :—

*Report and opinion of* The Honourable Charles Molloy Campbell, Esquire, *acting Attorney-General, on the charges brought by Mr. William Tarrant against the Chinese servants of the Government of Hongkong, in his letter of the 3rd July, 1847.*

The Honourable the acting Attorney-General, *assisted by C. B. Hillier, Esquire, Chief Magistrate of Police, and Daniel Richard Caldwell, Assistant Superintendent of Police and Chinese Interpreter*, on the 6th and 7th July, 1847, in obedience to Your Excellency's instructions, examined a great many witnesses, both Chinese and English, *nineteen in number*, at very great length. Their names are as follows :—Wei-afo, Lo-ceu-teen, Atai, Tsoo-aon, William Tarrant, Charles St. George Cleverly, Surveyor-General, Cheang-kum-chaong, Wei-acho, Wei-achuen, Wei-aman, Wei-awong, Mg-ho-hoey, Cheang-akum, Mg-cheu-kwang, Tam-ayee, Mg-mo-tuck, Wei-wing-kwoong, Norcott D'Esterre Parker, and Tam-atsoy. On the *8th July*, 1847, the acting Attorney-General, assisted by *Mr. Jozé M. Marques*, Chinese Interpreter to the Supreme Court, read to Tsoo-aon the evidence of Tam-atsoy, and took down Tsoo-aon's deposition. Mr. Marques having on the 10th July completed the translations of various documents which were produced in evidence, and referred to in the several depositions, the acting Attorney-General now hands in for Your Excellency's consideration his report and opinion.

I am of opinion the charges made by Mr. W. Tarrant *against the Chinese servants* of the Government, as contained in his letter of the 3rd July, 1847, *are groundless and without foundation.* After a careful investigation of the voluminous depositions which were taken by myself, and taking proper observation of the demeanour of the witnesses during their examination, and carefully perusing the translations of the Chinese papers furnished by Mr. Marques, and forming part of the evidence, I am of opinion that Mr. William Tarrant had taken upon himself a task which it was not in his power to accomplish. *He has been led astray by false rumours and idle conversations, without a shadow of probability.* The written documents now before me, taken together with the oral evidence, clearly prove this fact "that the par-"ties accused by Mr. William Tarrant of extortion have been in the habit, "and some of them are still receiving returns in money from the Central "Market, but these documents, etc., also prove that *these parties were and* "*are entitled to such moneys, as part proprietors of such market.*" There are no laws or regulations in Hongkong which prohibit Chinese servants in the employ of Government from acquiring shares of property in markets.

I am also of opinion that Mr. Tarrant's own evidence is of such a nature as tends to show, that he is not a fit and proper person to continue in Her Majesty's service. He has by his own admission been in possession of the rumours and *had taken part in the conversations alluded to by him* in his letter, and upon which he bases his charges, for eight or nine months, and although he has *had frequent opportunities of communicating* these rumours and conservations, coupled with insinuations that the practices he complains of were known and winked at by those whose duty it is to check them, to the authorities, or even to the gentleman at the head of the department to which Mr. Tarrant belongs, *he, Mr. Tarrant, concealed, and did not communicate* the same until the time he made his charges against the Chinese

* Taken *verbatim et literatim.*

servants of Government. His letter preferring these charges, and addressed to Charles St. George Cleverly, Esquire, Surveyor-General, is dated 3rd July, 1847. Mr. Tarrant's long silence upon a subject of such grave importance for a period of eight or nine months, and his preferring these charges after such a lapse of time, throw a suspicious character over the whole of his conduct, and *clearly show that he is influenced by other feelings than those of zeal for the public service.* Viewing the whole of these transactions as a lawyer, if the charges preferred had been proved, I would equally have given it as my opinion that Mr. Tarrant was equally guilty as the worst of the extortioners, merely on account of his knowledge and concealment of the facts. Supposing that he believed them himself, he would have done right had he communicated these idle rumours, conversations, and insinuations, to the authorities, immediately after he heard them.

CHARLES MOLLOY CAMPBELL,
*Acting Attorney-General.*

Victoria, Hongkong, 12th July, 1847.

The inquiry by Mr. Campbell in 1847, how constituted.

A remarkable, though perhaps unfortunate, fact in connexion with the constitution of the inquiry presided over by Mr. Campbell, and which no historian could pass over without notice, was, that Mr. Campbell was a personal friend of Major Caine and, it is believed, owed his position to him, and that both Mr. Hillier and Mr. Caldwell were particular protégés of his.* In alluding to Mr. Hillier in the charge of libel now under consideration, Colonel Caine said, in reference to Mr. Hillier,—"*Mr. Hillier was almost like a child of my own,*" and it was a well-known fact that Mr. Caldwell was originally taken into the service and owed his position and exceptional treatment therein *to that functionary also.*†

Investigation by way of charge for libel against Mr. W. Tarrant by Colonel Caine.

As will be seen, the result of the present investigation, instituted by Colonel Caine by way of a charge for libel against Mr. Tarrant, originated through a most scurrilous article in *The Overland Friend of China* of the 24th August, 1859, animadverting upon a speech of Mr. Anstey at Newcastle, most of the accusations of the libel having previously been published by Mr. Anstey in a pamphlet entitled '*Crime and Government at Hongkong.*' Mr. Anstey believing Mr. Tarrant's version of the dispute with Colonel Caine took up the matter on arriving in England, but he only mentioned it as an additional illustration of the abuses of the Hongkong Government, never adverting to it as appertaining to his own case.

On the eve of his departure Colonel Caine takes up the glove so often thrown at him.

On the very eve of his departure from the Colony, this long 'libelled' functionary, Colonel Caine, at last took up the glove so often thrown at him, and determined to clear his character of the scandal which had so long attached to his name and which, it is recorded, had caused it to be execrated among the Chinese trading

* See Chap. III. § II., p. 82 *note*, and Chap. VII., p. 147, *note*.
† *See* also Mr. Caldwell's pamphlet refuting charges against him by Mr. Anstey, p. 9.

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community and others by his allowing the persistently-repeated rumours to gain credence. The case came on for hearing on Saturday, the 17th September, 1859, and, as stated, the proceedings arose out of the article previously mentioned.

The affidavit of Colonel Caine leading to the proceedings for libel against Mr. Tarrant.

The matter being of so much importance and being so intimately bound up with the affairs of the Colony up to this period, quite apart from Colonel Caine who had, in a way, grown up with the island at this date, that it is deemed necessary to reproduce in full the affidavit of Colonel Caine which led to the proceedings under consideration, and which is as follows:—

IN THE SUPREME COURT OF HONGKONG.

*Crown Side.*

I, William Caine, Brevet Lieutenant-Colonel in the Army, make oath and say:—

1. That I am Lieutenant-Governor of the Colony of Hongkong, and am at present administering the Government thereof, and that I have successively held the offices here of Chief Magistrate, Colonial Secretary, and Lieutenant-Governor.

2. That I have perused the hereunto annexed impression of a certain newspaper entitled *The Overland Friend of China*, numbered 16, and bearing date the twenty-fourth day of August, 1859, and purporting to be printed and published by Luiz d'Azevedo for William Tarrant, editor and proprietor thereof.

3. That in such impression, and in the third and fourth columns of the first page thereof, occur the following remarks, viz.:—

"Notwithstanding the non-arrival of Sir Hercules Robinson, it is understood that Lieutenant-Colonel Caine, who, since Sir John Bowring left, has filled the post of Governor here, proceeds to England by the outgoing mail. This is the party referred to by Chisholm Anstey in his speech at Newcastle (extracts from which will be found on our third page) as 'the veteran' from India, whom he had heard declare many a time and oft, found it easy for officers to add £500 per annum to their pay by receiving presents from natives, and who, Mr. Anstey went on to say, had shown by his practice in Hongkong that he had not profited badly by the lessons so learned when in India.

"This is extraordinary language to use of a public man, and *must* necessitate a stringent enquiry. Should that enquiry be properly gone about, the result cannot be doubtful. Mr. Anstey, it will be seen, bases his charges on what appears in the book before him, and in the papers to be moved for by Mr. Edwin James; but, unless Mr. Anstey is requested by Government to give his aid to the unravelling of what that book and those papers unfold, we entertain grave fears for the success to truth of what may be done under the auspices of Downing Street.

"[Downing Street! Faugh! The very name of Downing Street, to victimized Colonists, stinks in our nostrils. If there is one germ of revolution and danger to the State, which of all others should be first eradicated, that germ lies in Downing Street. Downing Street, the callous-hearted, blind-eyed, deaf-eared monster—the pulse which of all others throbs untrue to the great heart of England.]

"There can be no difficulty, we should think, of substantiating against Colonel Caine a charge of malversation of office. The proof of this charge lies in the inferences to be drawn from his department as exhibited by the papers in question. Colonel Caine's name has been used to obtain money from the Chinese in all sorts of ways. According to Chinese report he wanted a dollar a head from each resident in Chinese brothels; he wanted fees for keeping gambling-tables; he wanted what was termed *hiang qun*, "duty money," for licences to sell in markets; he wanted presents for his influence in Council; he wanted a full supply of everything for his table from the market-holders; on building contracts, he wanted a huge percentage; on grants of leases, he wanted sums of various amounts, from one hundred to five hundred pounds. Even on offices held by Europeans under the Government he required his thirds, and one of our contemporaries went so far as to state that in the case of a Mr. Holdforth, who for some time filled the office of Sheriff, if Mr. Holdforth were to be believed, he got them! All these things, we say, the Chinese report, and they believe them to be true. Still it is just possible that all these reports are untrue; and certain it is that an enquiry into the brothel dollar extortion failed in eliciting any support to the allegations previously made by Chinese to respectable Europeans.* Gambling tables again are kept by Chinese even under the eyes of the Police, but there is no proof of fees going into Colonel Caine's pocket for the privilege. Even in the case reported on page 2 of this paper the Chinese insinuated that they believed the money extorted went to Europeans, but would mention no names.

"As regards the bonuses for leases—supplies for table—percentage on building contracts—fees for influence in Council, etc., all rest on surmise, or the assertions of Chinese whom the Government will not believe. Chowh Aoan, formerly the Treasury compradore, and still a licensed farmer of more than one monopoly under Government, is the only one that ever told us *he was directed* by Colonel Caine to demand money from Chinese for benefits to be accorded. When taxed with this before the Executive Council, he denied it, of course; nor were the assertions of two of his victims as well as our own, considered to weigh so heavily as his asseveration weighed.

"This is the same man Chowh Aoan, of whom it was proved in the Caldwell enquiry that he paid $550 to Mr. Caldwell's sister-in-law for the amelioration of his partner's punishment—$50 going to the woman—$500 *to some one else*—the sentence being reduced from fifteen years' transportation to two years' imprisonment.†

"All this we repeat, is only report, and Colonel Caine must be one of two things, either the cleverest rascal that ever lived—a felon for whom transportation would be too light a punishment, *or* he is a much maligned man, and deserving of the sincerest pity.

"This, then, being his actual position, the question naturally arising in the mind of any impartial person is this—What has Colonel Caine himself done to obtain relief from such odious imputations? And the answer is his condemnation. The answer is this, and the papers to which Mr. Anstey refers proved it: That when he had a good opportunity to confront his house compradore, the alleged recipient of much extorted money, with the parties who charged him, he did not simply allow, but, as appearances go, actually connived at his getting out of the reach of justice.‡ He did worse than this. Upon not a shadow of basis he charged the Englishman—the oldest subor-

* This, no doubt, is in reference to the charges brought by Mr. Shortrede against Major Caine, in 1845, although he was never charged with 'conspiracy' or libel—see *antè* Chap. III. § II., p. 80.

† This matter will be found referred to, *antè* Chap. XXIII., p. 508,—the amount paid,

Chap. XXIX. 1859. dinate officer of Government—who brought the matter to his notice, with the crime of conspiring to injure his—his—Colonel Caine's fame and reputation.* In doing this he effectually burked all attempt to elicit the truth; and initiated such a reign of terror among English officials, from the highest to the lowest, that not one of them (excepting Mr. Anstey) dares to open his mouth, though extortion might go on in Colonel Caine's name under his very eyes.

"Why to this hour, Chinese reports, coupled with contemptuous laughter, go that he pays his old compradore a pension *for some purpose or other*—this compradore being the man on whose receivings those entries were made in the Central Market books of "Paid Caine duty money"—"Paid Caine himself," etc.,—monies to the extent of £500 within one month, all of which was clear extortion.

"Such, then, are our grounds for saying that there can be little difficulty in substantiating a charge against Colonel Caine of malversation of office. The reports to which we have referred may, as Colonel Caine would have his friend believe, be all reports and nothing else; but though the scandal be but scandal, the extraordinary course which Colonel Caine has taken to rebut it is so mysterious and reprehensible, that, for it alone, he deserves punishment as a malfeasant. This conduct may be likened to that of the governor of a castle who, whilst he stoutly maintains the gate, permits the enemy to enter by another and *a prepared* way. It was ever his bounden duty to keep the character of this Government in the eyes of the Chinese pure and undefiled, and of all things to keep his own hands clean. The hands may be clean, but what has become of the character? What is the character of the Hongkong Government as represented on the name of Colonel Caine?

"If Colonel Caine is guilty of but a little of what is laid at his door, then we say that Mr. Caldwell, of whom our Newcastle friends are making so much noise, is an angel of light when placed in comparison; and, guilty or not guilty, it is all the same, for we say it, without the slightest fear of contradiction, that neither Mr. Caldwell, Dr. Bridges, nor Ma Chow Wong would ever have dared to act as they did had they not had before their eyes the spectacle of Downing Street's determination to ignore *all* complaint, not simply to ignore complaint, but to visit with pecuniary loss and contumely, present and prospective, all who dare to intrude complaint on their notice.

"Oh, for a more than Herculean power to crush that monster, Downing Street! that rival of the worst days of the Spanish Inquisition, or the German *Vehm*!"

4. That by the words Lieutenant-Colonel Caine, Colonel Caine, and Caine, in such article appearing, I only, and no other person, can be meant.

5. That I never at any time informed Mr. Chisholm Anstey that I had found it easy for officers in India to add £500 per annum to their pay by receiving presents from the natives, nor have I at any time said anything to the said Mr. Chisholm Anstey, or to any one else from which such assertion could be fabricated.

6. That I never at any time wanted a dollar a head from each resident in Chinese brothels—that I never at any time wanted fees for keeping gambling-tables—that I never at any time wanted what was termed *hiang gun*, duty money, for licences to sell in markets—that I never at any time wanted presents for my influence in Council—that I never at any time wanted a full supply of everything for my table from the market-holders, except upon the usual terms of paying for what I had like other people—that I never wanted a huge, or any percentage whatsoever on building contracts—that I never, on

* This, of course, refers to the case originally brought against Mr. Tarrant.

the grants of leases, wanted any sum or sums of money, and much less sums of various amounts from one hundred to five hundred pounds sterling—that I never required my thirds, or any proportion or fee whatsoever, on offices held by Europeans under Government, nor ever did receive any such proportion of either salaries or fees of office of any Colonial servants—that I did not, in any way, allow or connive at my house compradore getting out of the reach of justice—that I do not pay my old compradore a pension, and that I never have been guilty of malversation of office.

7. That the statements in the said *Overland Friend of China* newspaper, to the effect that there can be no difficulty of substantiating against me a charge of malversation of office, insinuating that I corruptly wanted a dollar a head from each resident in Chinese brothels in this Colony—that I corruptly wanted fees for the keeping of gambling tables in this Colony—that I corruptly wanted what was termed the "hiang-gun" duty money for licences, for persons to sell in market in this Colony—that I corruptly wanted presents for the improper exercise of my influence as a member of either the Executive or the Legislative Councils in this Colony—that I corruptly wanted a full supply of everything for my table from the market-holders of this Colony (without the usual payment therefor)—that I corruptly wanted a huge percentage on building contracts—that I corruptly wanted, on the grant of leases, sums of various amounts from one hundred to five hundred pounds sterling, and charging that on offices held by European servants in this Colony, I corruptly required or received a third of their salaries, and that when I had a good opportunity to confront my house compradore, the alleged recipient of much extorted money with the parties who charged him, I not only allowed but actually connived at the said house compradore's getting out of the reach of justice; and that I deserve punishment as a malfeasant, are false, malicious, and defamatory libels, and wholly untrue.

Sworn at the Supreme Court House, Victoria, this twenty-fifth day of August, A.D. 1859.

W. CAINE.

W. H. ALEXANDER,
*A Commissioner, etc.*

The trial.

At ten o'clock the acting Chief Justice, Mr. Adams, took his seat. Dr. Bridges and Mr. Pollard appeared for Colonel Caine, while Mr. Tarrant appeared in his own defence, assisted by Mr. Hazeland, solicitor. Dr. Bridges, as the reader will remember, was an intimate friend of Colonel Caine's, and as he too had good reason to remember Mr. Tarrant for past attacks, as may be imagined, he left no stone unturned which he thought he could turn to advantage. The defendant pleaded justification. The case lasted three days, and on Tuesday afternoon, the 20th September, the jury returned the following verdict:—

The verdict.

"We unanimously find the defendant guilty of the libel charged against him. And we find also that he has totally failed to connect Lieutenant-Colonel Caine, in even the remotest degree, with the various corrupt practices falsely alleged against him therein."

Defendant ordered to appear for judgment.

The defendant was then ordered to appear for judgment next morning at ten o'clock and ordered meanwhile to enter into recognizances. The next day, Wednesday, the 21st September, the Court met at ten a.m., precisely, when Mr. Tarrant handed

Affidavit of Mr. Tarrant in mitigation of sentence.

Chap. XXIX. in an affidavit for mitigation of punishment, and, after hearing both Dr. Bridges and Mr. Pollard in reference to some of the statements in the affidavit, the acting Chief Justice then passed sentence, referring to the various facts of the case as follows :—

1859.

The acting Chief Justice's remarks in passing sentence on Mr. Tarrant.

Heavy sentence.

He told the defendant that the affidavit he had handed in, after being found guilty by a jury of his countrymen (who not only found him guilty, but found also that he had failed to establish his charges), aggravated his case, instead of mitigating it. His Lordship then exposed the fallacy of saying that the charges were published for the public good,—and defendant's saying that it was to induce the Home Government to inquire into them, because he not only libelled Colonel Caine, but also the Home Government. His Lordship then remarked, that the libel seemed to be the result of private feeling ; that he (defendant) thought himself an injured man, and that he had all along attacked Colonel Caine as the supposed agent ; and that there was a strong animus evident from the whole wording of the article. The acting Chief Justice then remarked, that the characters of public men were public property, and that charges made against public men were charges made against society, and that, therefore, their characters required to be protected. The defendant had acted thoughtlessly ; he had collected all the rumours floating about, and published them, without carefully considering whether they were true or not. He had also acted negligently. A poor man might steal from necessity, but defendant had tried to rob Colonel Caine of his good character, at a time when he was going to return to his country amongst his early friends and relatives, and after he had served his country for forty-six years. Justice therefore required that the sentence be severe ; and as he always attended with great respect to the recommendation of a jury, he was bound to take into his consideration the special finding which the jury had appended to the verdict, and which would, if possible, induce him to be more severe ; and the sentence of the Court was, that defendant be imprisoned in the Common Gaol of this Colony for a period of twelve months, and pay a fine of £50, or be imprisoned for a further period in default.

Vindication of Colonel Caine's character.

The result, as might have been expected, after such a lapse of time especially, was a complete vindication of Colonel Caine's character, the jury having, moreover, been mainly guided by Mr. Campbell's finding which was, as is seen, highly favourable to Colonel Caine. Throughout the trial, the records show that the Court treated the defendant with great leniency, he not being represented by counsel. In one sense, however, the circumstances were favourable to an impartial inquiry. There was a Judge just out from England who could not be supposed to have had any prejudice one way or the other ; the jury were mostly merchants of high character and standing ; there was a mixture amongst them of old and new residents, and none of them were intimate with Colonel Caine ; the defendant was allowed every latitude, the matter was fully gone into, and the result was that the jury felt compelled to do even more than find Mr. Tarrant guilty of libel and brought in a special verdict. No attempt was made to substantiate the greater part of the charges brought against Colonel Caine, and where the attempt was made,

Defendant had no counsel.

An impartial inquiry.

Colonel Caine's long silence.

it entirely failed. It also appeared that three successive Governors and three Secretaries of State had had their attention directed to the charges against the Colonel, and had concluded there was no ground for them, though it seemed a pity for his own sake that Colonel Caine did not long before, either by instituting proceedings against Mr. Tarrant or otherwise, seek to requite the charges instead of allowing them to be repeated from year to year until the time when the public had got tired of them and had begun to believe in the truth of them, and thus allowed Mr. Tarrant to continue his attacks. The matter was now, however, thoroughly closed up.

Mr. Tarrant believed himself to have been injured by Colonel Caine.

The acting Chief Justice, in a lucid and admirable charge to the jury, made an observation which showed how thoroughly he had penetrated the true state of the case. It was to the effect that Mr. Tarrant believed himself to have been injured by Colonel Caine and thought that any weapons of warfare were allowable against him. Mr. Tarrant was wrong; but the conduct of a man labouring under a fancied grievance is not to be harshly judged when the conduct of those about him, who ought to enlighten and check him, is such as to sustain the delusion and to urge him on the course of warfare which he adopted.

The conduct of the Government.

In attempting to crush Mr. Tarrant by an absurd prosecution for conspiracy; in getting rid of him by the transparent device of abolishing his office while its duties still remained to be performed; in being afraid to point out the true grounds of his removal; and in concealing from public knowledge the investigation which was held at the time into the charges of corruption, Government took a course calculated to confirm Mr. Tarrant in his delusion, to raise suspicion as to the character of the investigation made, and to give scope for suspicion regarding Colonel Caine. Again, in backing up Mr. Tarrant with monetary aid as a public journalist; in its readiness to entertain slanders, and especially against public men; in its encouragement of violent language and unfounded accusations; and in refusing to place confidence in the servants of the Crown and the working of the public service, the local community, or at least a very large portion of it, supported Mr. Tarrant in the idea that his own interests as well as those of justice required him to hammer away at Colonel Caine with all the rumours or imaginings that he could pick up.*

The community supported Mr. Tarrant.

Acting Chief Justice Adams and

On the 21st September the acting Chief Justice, Mr. Adams,

* A perusal of Mr. Anstey's pamphlet on *Crime and Government at Hongkong* (pp. 40-47) shows how thoroughly he committed himself to Mr. Tarrant's charges against Colonel Caine, and there can be no doubt that, emboldened by both Mr. Anstey's pamphlet and speech at Newcastle, Mr. Tarrant brought the present castigation upon himself.

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and the acting Attorney-General, Mr. Green, having been gazetted to seats on the Legislative Council, were sworn in accordingly. At this meeting, at which the press were excluded, the Governor made some observations as to the constitution of the Legislative Council, expressing his opinion that for the future the official members should never bear to the unofficial members a greater proportion than two to one.

Mr. Green, acting Attorney-General, sworn as members of the Legislative Council.

The press excluded from the meeting.

The Governor's observations as to the constitution of the Council.

The Colonial Secretary, Mr. Mercer, stated that he was desirous of giving notice of motion on the subject of the press of the Colony, and intimated that, with the sanction of the Governor, he would at the next meeting of the Council submit a resolution, upon the form of which he would decide when he handed his written notice to the Clerk of Councils, but he wished only to state then that his object was to give either the Council collectively or the members individually an opportunity of expressing an opinion on the present state of the Hongkong press; but at the adjourned meeting held on the 9th November, he withdrew his notice of motion observing that "under existing circumstances there was not the same necessity as before" *(sic)* for the motion—doubtless conveying the idea that it was thought that the heavy sentence passed upon Mr. Tarrant would have the desired effect. Continuing, Mr. Mercer said that "his intention had been solely to provide some substantial security for the public against the scurrilous attacks of a portion of the press, and the means which he had designed to propose for the purpose were such as no respectable editor would object to." The matter then dropped, but it was not lost sight of, for on the 20th November, 1860, was passed the Ordinance No. 16 of that year "to amend the law relating to Newspapers in Hongkong."

Mr. Mercer's notice of motion on the state of the Hongkong press.

He withdraws his notice of motion.

Heavy sentence passed on Mr. Tarrant believed to have desired effect.

Ordinance No. 16 of 1860, amending the law relating to newspapers.

The idea prevalent in Hongkong was that both Sir Hercules Robinson and Mr. Adams had come out with instructions to put down that disagreeable spirit which had pervaded some members of the community, and the undoubtedly severe sentence passed upon Mr. Tarrant was ascribed to that idea, supported by the fact of the press being excluded from the sittings of the Legislative Council, and the Governor declining to ameliorate the condition of Mr. Tarrant in Gaol, as hereinafter related, which tended to attach the stigma of cruelty to it. At all events Sir Hercules Robinson had, as a matter of fact, been directed at the time of his departure for the Colony to make an inquiry into the various charges raised by Mr. Anstey, but cautioned however, against stirring up again "*all that mass of mud which appeared to have encumbered society in Hongkong.*"*

Sir H. Robinson and Mr. Adams had come out with instructions.

* *See* Debate in the House of Lords upon the case of *Tam Achoy, Capt. Baker and others*, June 28th, 1860, *infrâ*, Chap. XXXI.

But men are but human, and justice ought to be tempered with mercy, and it was to be remembered that the charges which Mr. Tarrant had brought against Colonel Caine had been reiterated openly over and over again during a period of twelve years, and not in a slanderous, behind-the-back manner, and that Mr. Tarrant probably deserved credit for his consistency, although he was wrong.

The severe treatment meted out to Mr. Tarrant in Gaol.

Notwithstanding these facts, however, immediately after the sentence passed upon him, Mr. Tarrant was taken to the Gaol and placed in an ill-ventilated cell "eighteen and three quarters feet broad by nine and a quarter feet wide, and twelve feet high," along with four other persons (felons and refractory seamen) with whom he was locked up twelve hours out of the twenty-four and limited strictly to Gaol rations, and subjected otherwise to severe treatment. No indulgence whatever was shown him, a treatment far different to that meted out to Mr. Murrow by Sir John Bowring after his conviction for libelling him. It is, of course, hardly necessary to add that on his incarceration Mr. Tarrant's paper, *The Friend of China*, ceased to appear and his property, whatever it was worth, was ruined.

Spirit of revenge.

Public feeling that punishment in excess of offence.

Colonel Caine, notwithstanding his conduct in the past in not prosecuting Mr. Tarrant, it was justly considered, ought to have been satisfied after having had a verdict recorded in his favour, without the Government now treating the delinquent with a severity that almost justified the statement that a spirit of "revenge" was being perpetrated upon Mr. Tarrant, to the extent that public feeling, little concerned at first so far as the individual himself went, now experienced a re-action that the punishment was in excess of the offence.

Mr. Tarrant is removed to the hospital ward.

On a visit of Mr. Mercer and two other Justices of the Peace to the Gaol, Mr. Tarrant is ordered back to his former cell.

Naturally his state of mind and "the felon's fare" began to tell upon Mr. Tarrant, who, by orders of the prison surgeon, was removed to the hospital ward and a better and more liberal diet prescribed for him. The Colonial Secretary, Mr. Mercer, and two other visiting Justices on a visit to the Prisons were horrified at finding Mr. Tarrant in hospital, and, questioning the surgeon, got him to admit that Mr. Tarrant was not actually ill, although a continuance in his first night's 'pleasant quarters' would probably have had the effect of rendering him so. Nothing, however, could move the stern visiting Justices. Mr. Tarrant was remanded back to his narrow cell and the companionship of felons and refractory seamen, whose language day after day and night after night was described as being of a most disgusting nature. The community now decided to take

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The community decide to take steps.

The Government petitioned to allow Mr. Tarrant to be confined in the debtor's side of the Gaol.

steps in the matter, and, as will be seen, the Jury by whom Mr. Tarrant was tried, together with some of the most respectable inhabitants, including members of the Legislative Council and gentlemen in the Commission of the Peace, petitioned the Governor, not with a view to shortening the period of confinement but in order to mitigate it so far as to allow of Mr. Tarrant being confined on the debtors' side of the Gaol. The following was the petition :—

The petition.

To His Excellency Sir Hercules Robinson, Governor of Hongkong and its Dependencies, etc., etc., etc.

Sheweth :—

That the undersigned, your humble petitioners, do hereby petition Your Excellency to ameliorate that part of the sentence passed on Mr. William Tarrant on Tuesday last, the 20th instant, for libel, by His Lordship the Chief Justice, viz., that he be imprisoned in the Common Gaol, to confinement in the Debtors' Gaol, under the regulations thereof.

Your petitioners further show, that the said Mr. William Tarrant is, or was, confined in a cell with four convicts.

That your petitioners further show, that Mr. Tarrant was in the said cell subject to a nuisance of the most disgusting nature,* through which your petitioners believe Mr. William Tarrant was temporarily removed to the hospital by order of the Colonial Surgeon ; that as your petitioners and the Colonists in general believe, that His Lordship had not possibly any idea of the place to which, he, His Lordship, had consigned the said Mr. Tarrant, would willingly give assent to Your Excellency's merciful consideration herein.

That your petitioners only petition Your Excellency that that portion of the sentence, as hereinbefore mentioned, may be altered to that of imprisonment in the debtors' prison.

That your Petitioners do not petition for any amelioration further than as before stated. And your petitioners as in duty bound will ever pray, etc., etc., etc.

Alfred Wilkinson.
R. Muirhead Reddie.
Henry Rutter.
G. J. MacKenzie.
D. M. MacKenzie.
H. M. Beckwith.
G. A. Weiner.
J. Jardine.
J. C. Bowring.
A. Fletcher.
John Dent.
P. Campbell.
J. Rickett.
Robert S. Walker.

Victoria, 29th September, 1859.

* The stench in the cell was said to be unbearable, attacks from rats, moreover, rendering sleep impossible.

This application was refused, the Governor regretting that "it was beyond his power to comply with the petition, and that when it had been brought to his notice that rumours were abroad to the effect that William Tarrant was illegally treated, His Excellency had requested the visiting Justices for the week to make inquiry and furnish a report,"---a copy of which he now forwarded for the information of the petitioners who, the Governor thought, would "be glad to learn that they had been misinformed as to the facts of the case." The following was the minute of the visiting Justices before alluded to :—

The Governor's refusal.

His admission that he had requested the visiting Justices to make inquiry and report.

The minute of the visiting Justices.

MINUTE.

Mr. Mercer and Mr. Lyall, the visiting Justices for the current week, paid a visit of inspection to the Gaol this day, accompanied by Dr. Murray, Colonial Surgeon, and, in accordance with the desire of His Excellency the Governor, made inquiry into an alleged grievance or complaint, touching the imprisonment of William Tarrant, under sentence for libel.

Tarrant was admitted into prison on Wednesday, the 21st, and was placed that night in a cell with four others, three of whom were light sentence men, and the other a deserter from Her Majesty's Navy.

The Colonial Surgeon, on Thursday morning, 22nd instant, found Tarrant in a state of excitement, and removed him to the hospital, where he still remains.

It is manifestly impossible—it would be positively indecent, and inhuman, to admit distinction or classification of crime in hospital, the comforts of which must be shared alike by felon and misdemeanant, when in a state of sickness. William Tarrant therefore being in hospital has no grievance on the score of confinement with felons, and this was the only complaint made by him, when the visiting Justices questioned him.

The only period then of his imprisonment which affects this inquiry, is the night of his admission into Gaol, when he was placed with four others, one of whom, the deserter, might possibly not have been there, had the Gaol accommodation permitted otherwise.

But until the Gaol extension, already commenced shall be completed, the classification of prisoners, contemplated by the Gaol Regulations cannot be fully carried out, and the body of Justices in revising the regulations perceived this, and took especial care to legalize the neglect of classification; by directing that such classification should be made *so far as the Gaol accommodation permitted.*

If desertion be felony Mr. Scott, the Gaol Governor, seems to have been unaware that it is so, but notwithstanding this there was nothing illegal in Tarrant's confinement on the night in question, nor did the visiting Justices understand the prisoner to make this a grievance, further than some annoyance which he represented himself to have suffered from rats.

Dr. Murray says that he placed Tarrant in hospital out of kindness to him, admits that with the best intention he stretched his authority, and pronounces Tarrant in perfect health, and with no claim in strictness to hospital privileges.

Under these circumstances the visiting Justices have no alternative but to direct that Wm. Tarrant be placed in that part of the Gaol to which his sentence consigns him.

Chap. XXIX. 1859. Mr. Scott is therefore desired to set apart the upper portion of the block known as building C. for European misdemeanants and remove Tarrant thither, unless His Excellency the Governor shall direct otherwise after perusal of this report.

This will keep Wm. Tarrant entirely separate from felons, and place him with offenders of his class.

His removal to the Debtors' Prison, which has been publicly suggested, cannot be considered by the visiting Justices, as it is certainly not within their province to interfere with the *character* of a judicial sentence.

W. T. MERCER,
GEO. LYALL,
THOS. C. LESLIE,* } Justices of the Peace for the Colony of Hongkong.

The Justices' recommendation as to Mr. Tarrant.

The Governor, not considering himself entitled to modify, in other words refusing to interfere with, the sentence passed upon Mr. Tarrant, the latter was, in accordance with the recommendation of the visiting Justices headed by Mr. Mercer, the Colonial Secretary, "placed in that part of the Gaol to which his sentence consigned him." But agitation now began earnestly both in and out of the Colony, and matters were not to be left where they were. The abominable condition of the Gaol came in for severe criticism.

Agitation began.

The abominable condition of the Gaol.

Meeting of the Legislative Council.

The condemnation of the Gaol by Mr. Adams, the acting Chief Justice.

At a meeting of the Legislative Council held on the 9th November, the acting Chief Justice, Mr. Adams, who had passed sentence upon Mr. Tarrant, inquired "if anything could be done to expedite the enlargement of the Gaol. He had examined the Gaol and thought of all the buildings of the kind he had ever seen, *it was the least fitted for the purpose for which it was intended.* It was certainly well fitted for inflicting punishment on the prisoners confined there, but not so as regarded the more important point of reformation." The Governor replied "that it was scarcely possible to hurry on the building more than was being done, and that the Surveyor-General was supplied with all the funds which he could employ for the purpose." Remonstrances, however, were not altogether made in vain.

The Governor's reply.

Meeting of the Justices of the Peace.

Amendment of regulations affecting misdemeanants.

Mr. Tarrant at liberty

At a meeting of the Justices of the Peace held on the 16th November the Gaol regulations affecting misdemeanants were amended, and Mr. Mercer backed out of the false position in which he had placed himself. Misdemeanants were subdivided into two classes, and those convicted of libel were "not to be compelled to do more work than the ordinary prison work necessary for the preservation of the cleanliness and comfort of their rooms or cells," and Mr. Tarrant was at liberty to receive

* It will be noticed that Mr. Leslie's name is not mentioned at the commencement of this minute.

and send out letters without these being inspected by the Governor of the Gaol. So far this was an amelioration in his condition, and Sir Hercules Robinson was taken to task for allowing himself to be overruled by "the pernicious social clique" in Hongkong, and undoubtedly a just regard for the prerogative of the Executive might have been exercised without any compromise of dignity and as affording an opportunity of initiating His Excellency's administration with some degree of *éclat*; and the imputation of yielding to the pressure of public opinion or of the press could have been avoided.

to receive and send out letters.

Sir H. Robinson taken to task.

Mr. Tarrant's sentence and treatment were taken up not only by Colonial and Indian papers but the press in England also took the matter up warmly, and it was eventually brought before Parliament.

The Colonial, Indian, and Home press on Mr. Tarrant's sentence and treatment.

The attention of the Secretary of State had also been called not only to the severe sentence passed upon Mr. Tarrant, but to the effect it would most likely have on his health, considering the state of the Gaol.

The Secretary of State approached.

While approving of the Governor's attitude and directing the Governor's attention to the fact that "the society of Hongkong must be protected from the reckless libels which had so long poisoned the very atmosphere of the Colony," the Duke of Newcastle directed the removal of Mr. Tarrant to the debtor's gaol and suggested for consideration that half of the sentence should be remitted. The following despatch of the Secretary of State on the subject will be found of interest:—

The Duke of Newcastle suggests removal of Mr. Tarrant to the debtor's gaol or remission of sentence.

The despatch.

Downing Street, 22nd December, 1859.

Sir,

With reference to your Despatch, No. 11, of the 27th September, reporting the trial of Mr. Tarrant for a libel on Lieutenant-Colonel Caine, and the sentence passed on him, I have to inform you that representations have been made to me in this country from various quarters, some of them entitled to consideration, to the effect that Mr. Tarrant's health is likely to suffer materially by his confinement in his present custody.

I have no ground for casting any doubt on the justice of the verdict or of the sentence, or of your own conduct in persevering (as you are reported to have done) in the performance of what you must have felt as a painful duty, that of resisting the applications of those who have sought for a mitigation of the punishment from yourself.

But if there should be real and serious danger to the health of the prisoner, I wish you (unless, as is possible, you have in such case anticipated my wish) to have him transferred at once to the debtor's gaol.

And if there be no such apparent danger to his health, I still think, regard being had to the general rule of punishment for offenders of this description, that no detriment to justice will arise from his being removed to the debtor's gaol as soon as one half of the term of his sentence has expired; that is, in the course of March next.

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It has been urged upon me by some, who disavow the slightest sympathy with Mr. Tarrant's writings and conduct, that the latter half of his sentence should be altogether remitted, and that he should be discharged from prison before the commencement of the hot season. I must leave to your discretion and local information how far such an act of leniency could safely be extended, feeling sure that on the one hand you will not suffer any vindictive influences to weigh against the prisoner, and on the other, that you will bear in mind that the society of Hongkong must be protected from the reckless libels which have so long poisoned the very atmosphere of the Colony.

I have, etc.,

(Signed) NEWCASTLE.

Governor Sir H. ROBINSON.

Mr. Edwin James brings Mr. Tarrant's case before Parliament.

Shortly after, Mr. Edwin James brought Mr. Tarrant's case before the House of Commons, when Mr. C. Fortescue said "that Mr. Tarrant had been treated with every possible leniency, and the rules of the Gaol had been altered in his favour. It was true that the Gaol was one which urgently required improvement, but that this was going on. The exercise of the discretion of the Governor was very difficult in the case of a system of libels, which had been carried to a great height in Hongkong, but directions had been sent out to adopt any course of remission of the sentence of Mr. Tarrant which was considered advisable." The reference here was no doubt to the despatch reproduced above.

Mr. C. Fortescue in reply.

'A system of libel carried to a great height in Hongkong.'

After undergoing six months' imprisonment Mr. Tarrant is released.

On the 20th March, 1860, after undergoing exactly six months' imprisonment, Sir Hercules Robinson remitted the remaining other half of the sentence of imprisonment against Mr. Tarrant, though the other portion of the sentence inflicting a fine of £50 was exacted. This remission of part of the sentence of imprisonment was due, no doubt, to the suggestion of the Secretary of State, the acting Chief Justice, Mr. Adams, having, moreover, stated that had he known of the condition of the Gaol at the time, he would not have passed such a heavy sentence.

The fine of £50 paid by subscription.

On his release from the Criminal Gaol, Mr. Tarrant is immediately confined in debtor's prison for costs due to Dr. Bridges.

But Mr. Tarrant's troubles were far from being at an end; on the contrary, they were but just beginning again. For, on his being released from the Criminal Gaol, the fine of £50 imposed upon him, having been paid by subscription, Mr. Tarrant was immediately removed to the debtor's prison for *costs* due to Dr. Bridges, consequent upon his trial, and confined in a room 'twelve feet square' with two sailors, one Irish and the other a Swede! A Justice of the Peace who called to see him, upon remonstrating with the Governor of the Gaol, was told that Messrs. Mercer and Lyall were the visiting Justices that day and he should be guided by them in the matter. Mr. Tarrant was, of course, not in a position to meet the heavy costs taxed against him, which amounted to $2,263.

Dr. Bridges was now the real complainant, and he, Shylock-like, thirsting for his pound of flesh, felt that his chance had come, and determined upon enjoying it to the full. Colonel Caine had engaged the whole Bar against Mr. Tarrant,* and had won his 'victory;' it was now Dr. Bridges turn to have his 'shot' at Mr. Tarrant for past 'attacks.' The following is taken from the writ issued by Dr. Bridges against Mr. Tarrant's chattels:—

Dr. Bridges, 'Shylock-like, thirsting for his pound of flesh.'

Colonel Caine had engaged the whole bar against Mr. Tarrant.

Victoria, etc. To the Sheriff, etc. We command, etc., goods and chattels of William Tarrant cause to be made $2,263 which William Hastings Alexander, Esquire, the master of the Crown Office in and for the said Colony who prosecuted for ourself in this behalf lately etc., together with twelve per cent. from 29th September, 1859, and have etc. to be rendered to William Hastings Alexander, the master of the Crown Office, and that etc.

Witness W. H. Adams, the 15th February in the 23rd year, etc.

(Signed) N. R. Masson,
*Deputy Registrar.*

This writ was issued by W. T. Bridges. Levy $2,263, etc., besides $3 for the costs.

Dr. Bridges' turn to 'go' for Mr. Tarrant.

The writ against Mr. Tarrant's chattels.

Months went by and Mr. Tarrant lay in prison under this attachment. During that time he corresponded with several lawyers and also with the Government, endeavouring to arrange the preliminaries of an appeal to the Privy Council.

Mr. Tarrant lay months in prison under the attachment.

His endeavour to appeal to the Privy Council.

Before this his property had been seized and sold by the Sheriff at public auction. His arrangements for starting his paper again were frustrated. He lodged an appeal to the Queen against the enormous amount of the costs, offering to find security for his appearance when the same should be decided; this was also refused. Representations were again made to the Home Government by Mr. Tarrant as to his renewed ill-treatment in Hongkong, and in a despatch dated the 21st June, 1860, a representative of Mr. Tarrant's in England was informed that the Duke of Newcastle "had not yet received any despatch from the Governor of Hongkong respecting the complaint forwarded by Mr. Tarrant. His Grace had no doubt that the Governor would exercise a proper discretion on the subject of Mr. Tarrant's complaints, but will be prepared to address a despatch to the Governor, recalling his attention to the case,"—evidently in ignorance of the fact that Mr. Tarrant was now

His property seized and sold.

Appeal to the Queen against the enormous costs.

Representations to Secretary of State as to renewed ill-treatment of Mr. Tarrant.

The Duke of Newcastle's reply.

* Apart from the amalgamation of the two professions which existed at this period, the Bar then consisted of Mr. Green, acting Attorney-General, Dr. Bridges, Mr. Kingsmill, and Mr. Pollard. Mr. Kingsmill does not appear to have taken any active part in the case against Mr. Tarrant, but he too apparently had been retained on behalf of Colonel Caine. See the acting Chief Justice's speech in the Legislative Council on the 17th November, 1860, on the passing of Ordinance No. 16 of 1860, relating to the Press, and to the disapproval he expressed at the whole Bar being retained by a prosecutor in a libel case—Chap. XXXI., *infrà*.

Chap. XXIX. 1859.

being detained in prison on a question of costs for which Colonel Caine and Dr. Bridges alone were responsible. This illustrated most conclusively that the incarceration of Mr. Tarrant was entirely an affair between Colonel Caine and Dr. Bridges, and simply indulged in for the gratification of the vindictiveness of the latter, if not of both. In fact, Dr. Bridges acknowledged that he had not incarcerated Mr. Tarrant for the sake of making him pay a just debt, and that money was no object if ulterior motives be obtained. He stated he would give the money to the charities if the costs were paid, and subsequently offered to forgo the entire amount if Mr. Tarrant would quit the Colony; and Mr. Tarrant, in reply, on the other hand offered to allow all matters between Dr. Bridges and himself to drop, if the latter would leave the Colony and never return to it. Dr. Bridges, being obdurate in his determination to keep Mr. Tarrant in Gaol and seeing the cause which had overthrown him, and Mr. Tarrant the contemptible conduct of his oppressors who had had their innings to their hearts' desire, the public, moved to pity, decided to stand by Mr. Tarrant and again accorded him that support which will ever recoil on those who may be said to have forfeited all consideration, from the petty spite they so shamefully indulged in.

Vindictiveness of Colonel Caine and Dr. Bridges.

Dr. Bridges' admission.

The public decide to stand by Mr. Tarrant.

A public subscription raised on his behalf.

On Saturday evening, the 4th August, 1860, Mr. Tarrant was released from Gaol, having met Dr. Bridges' bill of costs fully, by a public subscription raised in his behalf.

But for this public demonstration Mr. Tarrant would have remained in prison for a considerable time longer—as it is he had been incarcerated for over four months on account of Dr. Bridges' 'little' bill of costs, repeatedly denounced locally as 'extortionate.'

Incarcerated for over four months for Dr. Bridges' 'little bill.'

Mr. Tarrant's treatment was entirely characterized by injustice at first, partly for the sake of example, and afterwards by spoliation and vengeance. He was first crippled by criminal jurisprudence and then swamped with debt by civil process with interest piled at twelve per cent. per annum from the date almost of his incarceration which the acting Chief Justice and Jury in vain attempted to alleviate, the bill of costs, moreover, having been considerably reduced on revision. So ended this scandalous affair which not unnaturally cast a stigma upon the administration of Sir Hercules Robinson at its very commencement. As Colonel Caine was in reality Dr. Bridges' debtor for the costs, and as a considerable portion of them were fees of counsel earned by Dr. Bridges' coadjutor in the case, it would appear as if Dr. Bridges had assumed the debt, simply for the purpose of wreaking his vengeance.

Mr. Tarrant's treatment.

A stigma upon the administration of Sir H. Robinson.

Chap. XXIX.

1859.

Mr. Tarrant and *The Friend of China* revived.

Mr. Tarrant's death.

On his discharge from prison, Mr. Tarrant, meeting with sympathetic friends, was able to start afresh in his old pursuits, but his chequered career was not of much longer duration in the Colony.*

* Mr. Tarrant died in London on the 26th January, 1872, and the following obituary notice, taken from a local paper of the time, cannot fail to prove interesting:—"We regret to observe, in *The London and China Express*, an obituary notice of Mr. William Tarrant, well known as editor of *The Friend of China* newspaper. We believe few will hear of his death without regret, as even those who disagreed with a portion of what he wrote must admit that he was actuated by fair motives, though he was somewhat embittered by the sense of wrong suffered in his earlier years." *The London and China Express* contained the following notice:—"Few persons have passed through a more eventful career than William Tarrant, who died in London on the 26th January. Arriving in China in 1837, he was for a few years in the coasting trade. On the cession of Hongkong he obtained an appointment under Government in the Land Office, and superintended the cutting of that well known pass into the Wong-nei-chong Valley, and many other of the early roads and works of Hongkong. From this he passed to the office of Registrar of Deeds, including the drawing up of the leases and superintendence of sales of Crown lands in the town, at that time very onerous work. He was a most faithful and indefatigable servant of the Crown, and much appreciated by his superiors. His career of usefulness in this way was cut short in 1847, by his denunciations of the conduct of the late Colonel Caine,—then Colonial Secretary,—in certain transactions with the Chinese in the farming out of market licences, in which Mr. Tarrant asserted that bribery had been accepted by this official. He was arraigned before the Supreme Court for conspiracy and dismissed from the Government service. He then, with aid of friends, purchased *The Friend of China* newspaper, which he conducted in Hongkong up to 1859, when he was sentenced to twelve months' imprisonment in a libel case against the same Colonel Caine. Shortly after he removed his paper to Canton, and in 1862 to Shanghai. In 1869 he sold *The Friend of China*, which shortly afterwards succumbed. He arrived in London in 1870, much debilitated, and has suffered more or less since to the time of his death." At a meeting of subscribers to and persons interested in the City Hall, Hongkong, on the 26th August, 1872, it was announced that the late Mr. Tarrant had bequeathed to the City Hall Library, a complete file of *The Friend of China* which was then in transitu from England. Mr. Tarrant, it may be added, was also the author of an Index to the Ordinances of Hongkong (*antè* Chap. XII. § I., p. 280) and of a small book called '*The Early History of Hongkong*,' to the close of 1844, published in Canton in 1862, and which contained a series of articles reproduced from *The Friend of China*.

# CHAPTER XXX.

## 1859-1860.

### SECTION I.

### 1859.

Departure of Colonel Caine.—His career.—Complimentary addresses from Chinese and Indians.—*The Illustrated London News* on the mirror which the Chinese presented to Colonel Caine.—Remarkable coincidence on the departure of Colonel Caine.—Chief Justice Hulme in 1847, fighting a libellous charge against him by Governor Davis aided by Colonel (then Major) Caine.—Colonel Caine's pension and death.—Notification regarding the admission of persons within the Bar of the Court and the arrangement of seats.—Order of Court *re* writs of capias ad respondendum and rules to be observed in the drawing of a special jury in civil cases.—Resignation of Mr. Green, acting Attorney-General, through ill-health.—Mr. Kingsmill gazetted to act.—Dr. Bridges no longer eligible for Government employment.—Conviction of P. S. Kelly for extortion.—Increase of pay to the Registrar and Deputy Registrar of the Supreme Court, and to the Crown Solicitor.

### SECTION II.

### 1860.

Mr. Kingsmill, acting Attorney-General, objects to Mr. Hazeland appearing as counsel in a case wherein his partner, Mr. Cooper-Turner, was the attorney.—Ordinance No. 12 of 1858, s. 3.—The acting Chief Justice upon the point.—Removal of Chief Magistrate's Court pending repairs.—The Magistracy at the present day described.—Order of the Queen in Council providing for the exercise of jurisdiction over British subjects in Japan.—Act 6 and 7 Vict. c. 94.—Order of the acting Chief Justice that Cause List be gone through in regular order.

Ch. XXX § I.

Departure of Colonel Caine.

COLONEL Caine, whose sinecure appointment as Lieutenant-Governor was abolished upon the separation of the Superintendency of Trade from the Governorship of Hongkong on the arrival of Sir Hercules Robinson, and who had put off his departure in order to prosecute Mr. Tarrant for his old and oft-repeated personal attacks, took his final departure from Hongkong for England on the 28th September, 1859, by the P. & O. Steamer *Singapore*. He was born in India, and had begun his career there as a boy in 1804, when Lord Lake was fighting with Holkar, and ere the Mahratta country, the North-West Provinces, Gujerat, and, in fact, the greater part of our present possessions in India had fallen under British power. Mention has before been made in this work of his military services in India,* where he served with distinction either on the staff, or immediately under the eyes of several of the most distinguished General officers who there held commands. When he first came to

His career.

* See *antè* Chap. III. § III., p. 112.

Hongkong in 1841, there were only a line of matsheds along the beach where Queen's Road now is, and a few huts in the place occupied at the time of his departure "by the garden of Messrs. Dent and Co.," and on the first occupation of the island he lived in a matshed.*



As Chief Magistrate, Colonel Caine adopted a very decided military line of action and made his name respected, if not feared, among the Chinese. Sir Henry Pottinger, writing to the Duke of Wellington on his behalf, offered "the strongest testimony to his unceasing zeal and laborious exertions combined with great judgment. Up to the conclusion of the war, the safety and well-being of Her Majesty's subjects, who had located themselves on the island, were mainly owing to his individual efforts and example." Sir John Davis, in 1846, made him Colonial Secretary in succession to Mr. Bruce, and on going to Canton in 1847 left him as Commandant and acting Governor. He held the Colonial Secretaryship till April, 1854, when he was appointed Lieutenant-Governor, from which time he had almost nothing to do, though undoubtedly Sir John Bowring had found his experience and advice on most occasions of considerable value. Of his private life and many other facts in relation to him—allegations as to which were made when he was in office and which were never contradicted—the less said the better,† especially having regard to the undoubted good which he in many ways did to Hongkong in the earlier days of his career, and both for his own sake and for that of the Colony, quite apart from the infirmities of years which had now crept in, it was well that his connexion with Hongkong was now severed. Before leaving, the inevitable complimentary addresses were presented to him by the Chinese and Indians of the place. In alluding to this in its number of the 14th April, 1860, *The Illustrated London News* also gave an engraving of the mirror which his Chinese friends had presented to Colonel Caine, "*for whom*," added the Journal, "*no doubt he had done many a good turn*—(*sic*), words which, it may be added, did not fail to be wrongly construed locally.

Complimentary addresses from Chinese and Indians. *The Illustrated London News* on the mirror which the Chinese presented to Colonel Caine.

A remarkable coincidence on the departure of Colonel Caine, which one cannot help noticing at this stage, was the similarity of his position when compared with that of Chief Justice Hulme in December, 1847, leaving for England there to fight a *libellous* charge which had been brought against him by Governor

Remarkable coincidence on the departure of Colonel Caine.

* See also note to Chap. III § III., p. 113, *infrà*.

† For purposes of record in this respect, the reader is referred to *The Hongkong Daily Press* of the 10th February, 1860; 3rd July, 1861, and 17th June, 1863; *The Friend of China*, 9th November, 1861, p. 696; *The Early History of Hongkong*, W. Tarrant, 1862, p. 12.

Ch. XXX § 4.

1859.

Chief Justice Hulme in 1847, fighting a libellous charge against him by Governor Davis aided by Colonel (then Major) Caine.

Davis under scandalous circumstances aided and abetted by Colonel (then Major) Caine. Fate is truly singular in some things, and this was never more exemplified than in this case. Although the unfortunate Chief Justice had to proceed Home to clear himself of the libel, the sting of the charges of which Colonel Caine had cleared himself in Hongkong still remained in England, where Mr. Anstey, in his animosity to Colonel Caine, had not failed in his pamphlet on "*Crime and Government at Hongkong*," as well as in speeches, to vilify Colonel Caine in regard to those very accusations of Mr. Tarrant, and as to which a local journal, while commenting upon the result of the case against the latter, said that "a jury had gone out of their way by acquitting him, on leaving, of the charges laid at his door for years, although they saw that his opponent had all the Bar retained against him, and although they knew that the barrister who acted as the Colonel's counsel was actuated by pure animosity against the said opponent." Concluding, the paper added, "the result was an outrage for which the society of this Colony is responsible."

Colonel Caine's pension and death.

On his retirement, Colonel Caine was allowed the splendid pension of £2,250 per annum (due probably to the abolition of his office) he living many years to enjoy it. He died at the end of 1871.*

Notification regarding the admission of persons within the Bar of the Court and the arrangement of seats.

The following notification, regarding the admission of persons within the Bar of the Court and the disposal and arrangement of seats in the body of the Court, was published on the 5th November, 1859, and, taken in connexion with the board mentioned in January, 1852,† will be found of interest:—

NOTIFICATION.

In consequence of the great inconvenience and noise caused by persons crowding the space within the Bar of the Court, it is necessary to notify to the public, that it is the intention of the Court to insist upon the observance of the Rules regarding the admission of persons within the Bar, and which rules are as follows, viz.:—That no person has any right of entry within the Bar except the members of the Legal Profession, Members of Council, Justices of the Peace, Reporters for the Press, and parties in the cause, who are to enter by the stairs at the right-hand corner to the hall of the Court House—the Judge's private entrance being at the left-hand corner. Any person, not entitled to enter within the Bar and wishing to do so, should send in his card (or name) for submission to the Chief Justice.

The chairs on the raised platforms in the body of the Court are for the use of the European, and benches in the centre for the native, community.

By Order of the Court,

W. H. ALEXANDER,
*Registrar.*

* Colonel Caine died on the 19th September, 1871, at the age of seventy-three. He had for some time previously been attacked with paralysis.

† See *Antè* Chap. XII. § III., p. 319.

An order of Court dated the 14th November, relative to writs of capias ad respondendum and rules to be observed in the drawing of a special jury in civil cases, was passed by the Legislative Council on the 21st of the same month and published on the 26th.

Ch. XXX § I.

1859.

Order of Court *re* writs of capias ad respondendum and rules to be observed in the drawing of a special jury in civil cases.

Mr. Green, the acting Attorney-General, now found himself compelled to resign his high position in consequence of ill-health.* Indeed, at the time of his appointment in September, 1858,† it was thought that he was not in a fit state of health to hold office long. He, however, during his tenure of office, did much credit to himself and had as recently as the 12th November, 1859, been gazetted to the Executive Council. In consequence of his resignation, Mr Kingsmill was, on the 16th December, gazetted in his stead, with a seat in the Legislative Council, Dr. Bridges evidently being no longer considered eligible for Government employment.

Resignation of Mr. Green, acting Attorney-General, through ill-health.

Mr. Kingsmill gazetted to act.

Dr. Bridges no longer eligible for Government employment.

At the Criminal Sessions held on the 19th December, William Kelly, a Police Sergeant, charged with extorting fifty dollars, was sentenced to two years' imprisonment with hard labour.

Conviction of P. S. Kelly for extortion.

On the 21st November the Legislative Council considered applications from both the Registrar of the Supreme Court and the Crown Solicitor for increases of salary. The former drew £600 a year, while the latter was in receipt of £150 per annum. The official and unofficial members of Council considered the Registrar's pay inadequate, and on the 26th December, the committee on the Estimates recommended that the Registrar's salary be increased to £800 per annum; that of the Deputy Registrar to £450; and that of the Crown Solicitor to £300.

Increase of pay to the Registrar and Deputy Registrar of the Supreme Court, and to the Crown Solicitor.

Ch. XXX § II.

1860.

On the 3rd January, 1860, on a case which had been set down for trial being called on, the acting Attorney-General, Mr. Kingsmill, addressing the acting Chief Justice, said he had to call His Lordship's attention to the fact that Mr. Hazeland, who appeared for the defendant, was the partner of Mr. Cooper-Turner, the attorney in the cause, and therefore was ineligible to act as advocate in the case, the language of section 3 of Ordinance No. 12 of 1858 being perfectly clear upon the point.‡ Mr. Pollard, counsel for the plaintiff, remarked that on the previous day he had rather incautiously promised that he would not object to

Mr. Kingsmill, acting Attorney-General, objects to Mr. Hazeland appearing as counsel in a case wherein his partner, Mr. Cooper-Turner, was the attorney.

Ordinance No. 12 of 1858, s. 3.

* See his death noticed in Vol. II., Chap. XXXVI.

† *Antè* Chap. XXIV., p. 539.

‡ Section 3 ..... "And no attorney having a law partner shall be allowed to act as barrister in any matter where himself or his said partner is, or shall be, retained or acting as attorney."

Ch. XXX § II. 1860. Mr. Hazeland appearing, but at that time the section to which the acting Attorney-General now referred did not occur to him. Mr. Hazeland applied to His Lordship to adjourn the case to enable him to instruct counsel. Mr. Pollard said he was quite prepared to go on and that the other side should have known that it was their duty to obtain counsel.

The acting Chief Justice upon the point.

The acting Chief Justice said he thought it would be unfair to force on the case under the circumstances, as Mr. Pollard had himself led Mr. Hazeland to believe that no objection would be made to his appearing as advocate. His Lordship said there had been faults on both sides, and he should therefore postpone the hearing of the case until the 7th January. The defendant was ordered to pay the costs of the professional attendance and of the jury, the other costs being costs in the cause. The acting Chief Justice further remarked that the acting Attorney-General had done no more than his duty in making the objection and had done it in a very proper manner.

Removal of Chief Magistrate's Court pending repairs.

In reference to the Magistrates' Courts referred to in April, 1859, and the intention of the Government to pull them down and re-build them,* the Chief Magistrate's Court, it is recorded, was at this time removed to the Harbour Master's old office on the hill in order to allow the work to be carried out. As in the case of the Supreme Court House, the Police Courts continued to be a matter of complaint for a considerable time,† and it is interesting to note at this stage what was but recently said upon the subject by a local organ of public opinion‡ :—

The Magistracy at the present day described.

"One does not need to be fastidious in finding fault with the wretched place in which the Police Magistrate of Hongkong exercises his functions. We feel pretty confident in saying that there is not a more wretchedly-lighted, ill-designed, and badly-ventilated Police Court in all the British colonies. The room is abominably dirty, the ceilings are festooned with cobwebs, and a fitting legend to place over the door of the place would be that which Dante described as adorning the portals of the nether regions. The dock is frequently crowded with prisoners, some in very advanced stages of disease and filthiness, and just about two feet away is the one solitary table that has to do duty for counsel, press, and police officers. It frequently happens that there is no room in the dock for all the day's prisoners and then the "overflow congregation" is jammed in between the dock rails and the backs of the chairs of the solicitors and reporters. The close proximity of, say, twenty or thirty people taken from a fantan "school" is not a comforting thing and several men of law have gone to much inconvenience rather than endure the contiguity. Then also there is the dense throng of Chinese that fill the rear part of the room. They are generally idlers of the coolie class who come to kill time, and many of them bring loud and unpleasant evidence of pulmonary troubles. In hot weather when an interesting case

* See *antè* Chap. XXVI., p. 588.
† See *antè* Chap. XI., p. 237.
‡ *The Hongkong Telegraph*, 9th March, 1898.

(from a Chinese point of view) is in progress the atmosphere of the place gives a suggestion of the "Middle Passage" in a slaver and the constant hawking and expectorating is really sickening. In winter things are not much better and the draughts that sweep through it have given many a cold. Indeed, one of the worthy occupants of the Bench one day lately was quite voiceless and at other times he has had to dispense justice with his hat on owing to the draught. It is a common thing to see the gas alight during the forenoon in winter and generally the present Police Court seems as badly adapted for its purposes as it can possibly be....."

Order of the Queen in Council providing for the exercise of jurisdiction over British subjects in Japan.

Act 6 and 7 Vict. c. 94.

On the 23rd January an Order was passed by the Queen-in-Council repealing the previous Order of the 3rd March, 1859, providing for the exercise of Jurisdiction over British Subjects in Japan under the Act 6 and 7 Vict. c. 94. This Order, however, was not promulgated in the Colony till the 11th May of the following year, 1861. The above-mentioned Order-in-Council of the 23rd January, 1860, was itself, however, subsequently amended by a further Order of the 4th February, 1861, and published in the Colony on the 26th April of the same year.

Order of the acting Chief Justice that Cause List be gone through in regular order.

The Court opened on the summary side as customary at ten o'clock on Friday morning, the 3rd February, but, as usual the parties interested were not in attendance and for some time there was no business with which the Court could proceed. The acting Chief Justice then observed that in future he should go through the Cause List in regular order, at the time appointed, and that in every case in which the plaintiff and his witnesses did not appear he would strike out the cause, or, if the defendant and his witnesses did not appear, he would proceed with the case as an undefended action.*

* Upon this point see also *antè* Chap. XVII. § I., p. 398.

# CHAPTER XXXI.

## 1860.

A buccaneering raid.—Trial of Tam Achoy, Captain Baker, and others for fitting out the *Sir Jamsetjee Jeejeebhoy* to commit hostilities against the subjects of the Emperor of China.—The facts.—*Hakkas* and *Punti*.—Yeh's detestable cruelty.—Tam Achoy's native place.—The *Hakkas* victorious.—The *Punti* appeal to the local Government.—The aim of the expedition.—Chow Achoon made a stronghold.—Mr. Caldwell and other officers of Government answerable for the blood-wreaking vengeance.—Defendants plead guilty. —Affidavit of defendants in mitigation of punishment.—Mr. Caldwell's affidavit.—Defendants bound over to appear for judgment when called upon.—The acting Chief Justice's decision.—English law in Hongkong.—The raid not conducted in an underhand manner. Before starting on the expedition Tam Achoy consulted the Government.—How far the affidavits affected Government.—The acting Chief Justice's refusal to allow copies of the affidavits to be taken.—Advantage taken to draw again the attention of the Home Government and Parliament to the affairs of Hongkong.—Mr. Edwin James again moves House of Commons.—The petition to the House of Lords by the Newcastle Foreign Affairs Association.—The condition of Hongkong twice brought before Parliament by the petitioners.—The Duke of Newcastle on the 'transactions at Hongkong which reflected little credit on all the parties concerned.'—The petition of the Newcastle Foreign Affairs Association.—Apathy of Home authorities relative to representations of Associations on Hongkong affairs.—The local support given to Mr. Caldwell.—The Duke of Newcastle in the House of Lords.—His instructions to Sir Hercules Robinson.—Inquiry into charges by Mr. Anstey. The Governor "cautioned against stirring up again all that mass of mud which encumbered society in Hongkong."—The discussion in the House of Lords.—The Duke of Newcastle on what had been done to purify Hongkong.—Mutiny of prisoners in the Gaol.—The state of the Gaol.—The sentences of imprisonment passed in the Courts.—The disgusting state of affairs prevalent in the Gaol.—Mr. Hillier's account of the Gaol in 1855.—Unnatural crimes.—Robberies by fellow-prisoners.—Young criminals associated with hardened criminals.—The Reformatory started afterwards.—Mr. Hillier's report on the Gaol.—Mr. Lyall's report in 1857.—The report of Messrs. Anstey and Rickett in 1858.—Eli Boggs, the American pirate, released from Gaol.—Cruelty in other forms in the Gaol.—Suspicious death of Lyc Mooey Chie.—His body exhumed. —Had complained of illness and had been flogged.—No interpreter attached to the Gaol.—The verdict.—Ordinance No. 1 of 1860.—Departure of Mr. Mitchell, assistant and acting Chief Magistrate, on leave.—Ordinance No. 2 of 1860.—Mr. Mitchell's career reviewed.—Mr. Alexander, Registrar, appointed acting Chief Magistrate.—Mr. May, Marshal of the Vice-Admiralty Court.—Departure of Mr. Parsons, solicitor.—Mr. Pollard appointed his law agent.—Mr. Parson's death.—Death of Mr. Newman, acting Harbour Master and Marine Magistrate.—Lieutenant Harris acting.—Lieutenant Thomsett, of the *Princess Charlotte*, acting.—Return of Mr. Inglis to duty.—Ordinance No. 4 of 1860.—Mr. Masson, Deputy Registrar, goes on leave.—Mr. F. S. Huffam, acting Deputy Registrar.—Mr. T. Turner, acting Clerk to the Chief Justice.—Return of Mr. Weatherhead from leave.—Acting Chief Justice Adams appointed a member of the Executive Council.—An anomaly.—The Governor in need of a good adviser.—Departure of Major-General Van Straubenzee.—Letters Patent of the 30th January, 1860, investing the Supreme Court with jurisdiction in civil suits originating in Japan.—Mr. Kingsmill as acting Attorney-General.—Ordinance No. 7 of 1860.—Ordinance No. 5 of 1858.—Credit for the introduction of Rules and Orders of Superior Courts at Westminster belonged to Mr. Anstey.—Ordinance No. 8 of 1860. Interpretation. Resignation of Mr. Dick, Chinese Interpreter to the Supreme Court.—Appointed interpreter to the Commissariat Department of the Expeditionary Force.—Nothing yet done to inaugurate a system of educating interpreters.—Re-introduction of Mr. Caldwell owing to his knowledge of Chinese.—Mr. Dick appointed Deputy Commissioner of Customs at Canton.—Ordinance No. 11 of 1860.—Complaints against the press being excluded from the Legislative Council.—Nothing being done towards promised inquiry into grievances.—The Governor and Mr. Adams believed the press detrimental to the well-being of Hongkong.—The scandal attached to the British Government in China.—Mr. Caldwell notorious throughout Asia.—*The London and China Telegraph* and the "unalterably-infamous administration of Sir John Bowring." Letter from the Foreign Affairs Association to the Duke of Newcastle.—Protest against Mr.

Anstey's treatment as compared with that dealt out to Dr. Bridges and Mr. Caldwell.—The tribute paid to Mr. Anstey.—The attack made by Mr. Anstey against Dr. Bridges in the Caldwell Inquiry never resented or repudiated.—The renewed agitation the cause of immediate instructions being issued to institute an inquiry.—Mr. Caldwell's name doomed to come up ever and anon.—Conviction of Sung A-Ming for coolie-kidnapping.—Mr. Caldwell's name unfavourably mixed up.—He is charged by a local paper with extortion and perjury, and brings an action for libel against the editor.—Plea of justification withdrawn by the editor.—Acting Chief Justice implies that an inquiry is pending into the conduct of Mr. Caldwell and others.—'A tribunal where neither quirks nor quibbles would be permitted.'—The Government Notification announcing inquiry into alleged abuses before the Governor-in-Executive Council.—The beginning of a new era.—The notification also published in Chinese.—Thirty-three more names added to the Commission of the Peace.—Departure, resignation, and death of Mr. J. Jardine, M.L.C.—Mr. A. Percival nominated, *vice* Mr. Jardine.—Mr. A. Fletcher, M.L.C., *vice* Mr. G. Lyall, resigned.—Governor heretofore no power to remit penalties other than those due to the Crown.—Dr. Bridges' bill of costs against Mr. Tarrant.—Ordinance No. 14 of 1860.—The press in the Legislative Council. Speeches of the Governor and Mr. Adams.—Mr. Adams confirmed as Chief Justice.—The Governor and Chief Justice acting under instructions.—The Governor's speech. 'The law of England was the law of the Colony from the time of its cession.'—The Chief Justice's speech.—Ordinance No. 16 of 1860.—Mr. Caldwell or 'The Civil Service Abuses Inquiry.'—The members of the Committee.—Chief Justice Hulme pensioned.—His career reviewed.—'He was a very good Judge'.—His dilatoriness.—Pending reforms in Hongkong probably induced the grant of the pension.—The pension.—Chief Justice Hulme's death.—Notification of appointment of Mr. Adams as Chief Justice.—Salary of Chief Justice reduced.—Mr. Huffam, Clerk to the Chief Justice, *vice* Mr. Weatherhead.—Chief Justice Adams goes to Shanghai on sick leave.—Comments on inadvisability of reducing the Chief Justice's salary.—Jurisdiction over Consular Courts.—Chief Justice Hulme and Chief Justice Adams on the Court's vacation.—The necessity for the appointment of a Puisne Judge.—Dismissal of Mr. Clifton from the Shanghai Police Force.—Mr. T. J. Callaghan appointed Chief Magistrate, *vice* Mr. Davies.—His arrival.—Conviction and execution of Abdullah for murder.—Convention and Treaty with China of the 26th June, 1858.—Murder by Chinese burglars of P.C. da Rocha and J. Maria.—Perpetrators undetected.—Marriage of Chief Justice Adams' eldest daughter.—Conclusion.—Author's comments.

Chap. XXXI.

1860.

A BUCCANEERING raid, destined further to engross the records of maladministration and disorder in Hongkong is recorded at this period and was deemed of sufficient importance for discussion in Parliament afterwards. At the Criminal Sessions held on the 21st February Tam Achoy, a Chinaman, Captain Baker, a British subject, and a number of other English and American seamen were severally charged with misdemeanour in fitting out the steamer *Sir Jamsetjee Jeejeebhoy* with intent to commit hostilities against the persons and property of the subjects of the Emperor of China. In other words, the parties had engaged in a serious buccaneering expedition against a Chinese village near Macao in which several Europeans and Chinese were killed, the facts in reference to which were as follows.

A buccaneering raid.

Trial of Tam Achoy, Captain Baker, and others for fitting out the *Sir Jamsetjee Jeejeebhoy* to commit hostilities against the subjects of the Emperor of China.

The facts.

When the rebels obtained the upper hand in the province of Kwangtung some seven years ago (being then only prevented from taking Canton by the action of the Governor of this Colony and the British Admiral on the station), a large number of *Hakkas*, *i. e.*, strangers, banded themselves together and offered their services to the Provincial Government. These services were accepted and proved highly efficient. Upon the rebellion being crushed, however, these *Hakkas* would neither disarm nor disperse. They probably were refused their just dues, or still more probably had cause to complain of Yeh's

*Hakkas* and *Punti*.

Yeh's detestable cruelty.

Chap. XXXI. detestable cruelty. At all events they determined by force to dispossess the *Punti*, *i. e.*, children of the soil, of certain districts of which Yunping, Tam Achoy's native place, was one, and themselves become the owners and tillers of the soil. The probability was that the *Hakkas* were starving and, being driven to desperation, helped themselves to food—a proceeding which, of course, the *Punti* resisted to the death.

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Tam Achoy's native place.

Under such a state of things, and considering the unrelenting cruelty and unscrupulous animosity of the Cantonese to their enemies, it could hardly be wondered at that war to the knife soon became the order of the day. The enormities committed by the *Hakkas* as described by the *Punti* were heart-rending, but, looking at this expedition of Tam Achoy, it would appear that much of the cold-blooded slaughter described was provoked by retaliation. The *Hakkas* were ultimately victorious and overran Yunping as well as some adjoining districts. In vain did the *Punti* appeal to the local Government. The mandarins deemed the matter a faction fight and left it to be fought out. More singular still, the *Hakkas* flew imperial Tartar banners when they marched against their enemies. Having thus possessed themselves of the country, they seem to have murdered or driven the *Punti* away, of course, retaining a number of the women for ransom or otherwise, and settling on the soil, tilling it and simply seeking quiet possession. Tam Achoy's clan must have made themselves very inimical towards these marauding interlopers, as the village of which he was a native had been entirely destroyed by them some time previous and there could be no doubt that many of Tam Achoy's relatives had fallen by the hands of the *Hakkas* and very probably some females near akin to him were in their hands. His conduct therefore in equipping these expeditions was perhaps manly and commendable, morally speaking, but the act of mercenaries who joined him in a political affair, which both the Chinese and British authorities had declined to notice was quite another matter. The districts ravaged by the *Hakkas* were those from which the bulk of the Chinese who emigrated to California and Australia came. These men had raised a subscription among themselves, electing Tam Achoy treasurer and manager. He selected the village of Chow Achoon as the object of attack, not because of any peculiar atrocities having been committed there, but because he thought it was accessible to artillery from the water, and could be attacked with success by foreign vessels.

The *Hakkas* victorious.

The *Punti* appeal to the local Government.

The aim of the expedition.

The aim of the expedition was therefore vengeance and the destruction of human life. The *Hakkas* proved to be Tartars, as

their banners proclaimed. To guard against pirates and to provide themselves with a port on the coast, they had made Chow Achoon a stronghold. It being imperative that buccaneering, in whatever shape and for whatever cause, should be summarily stopped, the local authorities deemed it advisable to take up the matter, the more so as it was surmised that some of the officers of the Government, especially Mr. Caldwell, were mainly answerable for this piece of blood-wreaking vengeance, if not in countenancing it, at least in not stopping it. On being arraigned, the defendants severally pleaded guilty of the misdemeanour with which they were charged, and in mitigation of punishment Tam Achoy, James Baker, and Thomas Brasil handed in the following affidavits from themselves and from Mr. Caldwell to the Chief Justice, which were duly read in open Court;—

Chow Achoon made a stronghold.

Mr. Caldwell and other officers of Government answerable for the blood-wreaking vengeance.

Defendants plead guilty.

Affidavit of defendants in mitigation of punishment.

IN THE SUPREME COURT OF HONGKONG.

The Queen *v.* Tam Achoy.
The Queen *v.* James Baker.
and
The Queen *v.* James Baker and Thomas Brasil.

We, Tam Achoy, of Victoria, Hongkong, Chinese trader, James Baker, master of the Steamer *Jamsetjee Jeejeebhoy*, and Thomas Brasil, chief officer of the said vessel, the two latter make oath, and the said Tam Achoy, being a heathen, duly warned, do declare and say—

And first we severally say—

1. That we have in entire ignorance committed a breach of the law, and had we been aware that we were violating the Foreign Enlistment Act or any other Act or Ordinance by the course of action we entered into with regard to the expedition against Chow Achoon, we would most certainly have desisted therefrom.

And I, Tam Achoy, for myself say—

2. That I am a native of Chong Hong, which is in the immediate neighbourhood of Chow Achoon, and was requested by Chin Que Yon, the Imperial Mandarin residing at O-Fook, and having jurisdiction over Chow Achoon, Chong Hong, to charter a steam vessel to enable him the said Chin Que Yon to bring into subjection a tribe of Hakkas who had forcibly taken possession of Chow Achoon and were committing great ravages throughout the neighbouring country, and also to hire some foreigners in Hongkong to assist the said Chin Que Yon in such attempt.

3. That I had no idea of deriving any pecuniary or other benefit whatsoever from the hiring of such steamer, or such foreigners as aforesaid, and not being aware that I was in any way offending against the law, and of my own knowledge being assured that much injury had been caused to my native place by the Hakkas in question, I co-operated in hiring such steamer and such foreigners.

And we, James Baker and Thomas Brasil, for ourselves severally say—

4. That we took no part whatsoever in the transactions connected with the hiring of the said steamer, engaging the said foreigners or with the subsequent operations at Chow Achoon beyond continuing our avocations as

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master and chief officer of the said steamer, which employ we have both held for some time.

And we, the said Tam Achoy, James Baker, and Thomas Brasil, severally further say—

5. That as a proof of our not having wilfully broken the law, we allege that we had applied to the Government for the use of a gunboat to co-operate with the said steamer in the said operations and for leave to charter a steamer; and that such application was made through the Registrar-General, and from the said Registrar-General an answer was received to the effect that the Government could not interfere.

Sworn at the Supreme Court House, Victoria, Hongkong, this 21st day of February, 1860, the deponent Tam Achoy having been duly warned by Thomas Dick, sworn Interpreter, to interpret in accordance with the Ordinance in that behalf, then declared the contents of the above to be true.

JAMES BAKER.
THOMAS BRASIL.

Before me

F. S. HUFFAM,
*A Commissioner, etc.*

Mr. Caldwell's affidavit.

The following was Mr. Caldwell's affidavit:—

IN THE SUPREME COURT OF HONGKONG.

The Queen *v.* Tam Achoy.
The Queen *v.* James Baker.
and
The Queen *v.* James Baker and Thomas Brasil.

I, Daniel Richard Caldwell, of Victoria, Hongkong, Registrar-General, make oath and say—

1. That in the month of December last past, Achoong, P. & O. compradore, came to me and asked me whether he might charter the steamer *Jamsetjee Jeejeebhoy*, to Tam Achoy to go to Tsoo Choong to operate against the Hakkas. I informed the said Achoong that if it was a private matter it could not be done, but that it might be otherwise if he had the authority of the Chinese Government: and I stated that Tam Achoy must come and see me on the subject. Within a day or two after this Tam Achoy waited on me and produced a written authority which I found from the seal to be from an officer of the Chinese Government, asking him to assist in operations against Hakkas at Chow Achoon.

2. That I then waited on the Colonial Secretary, and stated the fact, who said that he did not see any objection to the charter as the Chinese Government were the charterers, and I informed Tam Achoy to the effect that the charter might be made.

3. That on a subsequent occasion James Baker, the master of the said steamer, waited on me from Tam Achoy stating that the steamer had been fired upon at Chow Choong, and asking for the assistance of a gunboat, whereupon I applied to the said Colonial Secretary, who stated that it was entirely a Chinese matter, and our Government could not interfere and this answer was communicated by me to the said James Baker.

Sworn at the Supreme Court House, Victoria, this 21st day of February, 1860. (Signed) D. R. CALDWELL.

Before me

F. S. HUFFAM,
*A Commissioner, etc.*

The Court, on consideration of the circumstances set out in the affidavits, took a lenient view of their case and only bound the defendants over to appear for judgment whenever called upon. In delivering judgment, the acting Chief Justice spoke as follows :—

Defendants bound over to appear for judgment when called upon.

The acting Chief Justice's decision.

He said that the defendants had acted wisely in adopting the advice of their counsel, it being quite impossible to deny that a breach of the law had been committed. Having done an illegal act the only proper course which was open to them was to confess their fault, and to bring forward such circumstances as they were able in extenuation or mitigation of their offence. It would be a gross violation of international law if persons—whether natural-born subjects or foreigners—domiciled in one State, were to be permitted to levy war or fit out hostile expeditions against the subjects of another State, against whom no declaration of war had been made by the sovereign authority. If such proceedings were tolerated, peace between any two nations would soon become impossible, as there are always to be found persons, who, for the gratification of private animosity, revenge of individual wrongs, real or imaginary, the hope of plunder, or even the love of excitement and adventure, would not hesitate to embark their property, and induce the more needy to risk their lives, in hostile expeditions against the persons and property of subjects of friendly powers. All such acts were contrary to the spirit and the letter of the English law, which would be found sufficiently strong, when duly administered, to restrain and punish those who might offend. It was not to be endured that acts, such as the defendants had been guilty of, should be perpetrated in a British Colony ; and all persons must be taught that not only the subjects of the Queen of England, but foreigners also resident on this island, where they receive the protection of the British law, must in return submit to the authority of that law, and not avail themselves of the asylum which they here enjoy to equip, and send forth hostile expeditions, by which just cause of offence would be given to the sovereign of a neighbouring country. It was the duty of every State to enforce obedience to its own laws, and to protect its own subjects; and if, unhappily, injury and wrong resulted from the weakness of the Government, and the inefficiency of the officials of the Chinese empire, those who were aggrieved were entitled to call for the intervention and protection of their own rulers, but they must not seek to right themselves by the strong hand, and invade the territory of a power, against whom no declaration of war had been made by the only authority legally competent to do so. In the present case, the extenuating circumstances were exceedingly strong—stronger, he thought, than he had ever before known—for the defendants had evidently acted under the impression that they had a right to do as they had done ; they had made no secret of their intentions, and (which was most important) they had, as appeared from the affidavits which had been handed in, been applied to, in the most formal manner, by a Chinese mandarin, to assist him, with men and materials, to attack a large number of his own fellow-subjects, against whom complaints had been made, but who were strong enough to treat with contempt the efforts of officials who had the will, but not the necessary forces, to suppress evil practices, and inflict merited punishment upon the evil-doers. It was evident that Tam Achoy was anxious to carry on a clannish feud, and had availed himself of the appeal for assistance which was made to him, in order to exterminate, if possible, the enemies of the clan to which he belonged ; but no expeditions, such as he had organized, would be tolerated, or escape the vigilance of the authorities of this island, and although he (the acting Chief Justice) felt justified, under all the peculiar circumstances of this case, in dealing leniently with the defendants, he wished them, and all others who might hear him, distinctly to understand, that if an offence of a like nature should again be committed, the offenders would most assuredly be punished

English law in Hongkong.

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with great severity. He desired to afford the defendants an opportunity of proving that they sincerely regretted the illegal and mischievous transaction in which they had been engaged, and he would therefore abstain from passing sentence on the present occasion. The principal offender, Tam Achoy, would enter into recognizances, himself in £1,000, and two sufficient sureties in £500 each, to appear when called on, and abide the judgment of the Court; the defendant, Baker, would enter into his own recognizance in £500, and two sureties in £250 each; and the remainder of the defendants in the sum of £250 each.

The raid not conducted in an underhand manner.

This act of misdemeanour to which the parties had pleaded guilty with the more serious buccaneering raid in which they were engaged, was not conducted, as may have been seen, in an underhand manner nor without encouragement which many would probably have considered sufficient. Before starting on his expedition, Tam Achoy consulted, through Mr. Caldwell, the Government of the Colony upon the subject, and received no warning out of the scrape. It is difficult to say whether or not he received any actual encouragement. This fact was put forward by the defendants in their affidavit, and of a similar tenour was that made by the Registrar-General himself. It is difficult to say exactly how far these affidavits affected Government, for unfortunately at the time, both for himself and for the Government, it is recorded that Mr. Adams, the acting Chief Justice, departed so far from the usual course in such cases by refusing copies of the affidavits, on application made to him, although they had been put in by the defendants in mitigation of punishment, and had been read in open Court. Naturally this refusal, coupled with the reticence of the Government upon the subject, tended to leave matters in a very dubious and suspicious light as regards Mr. Caldwell and Mr. Mercer, while the refusal of the acting Chief Justice to give copies of the affidavits, even if there had been good reasons for such a departure from the ordinary rule, did not serve to enlighten the aspect of the scene, and the matter was therefore taken advantage of to draw again the attention of the Home authorities, and particularly of the House of Lords, to the affairs of Hongkong generally.

Before starting on the expedition Tam Achoy consulted the Government.

How far the affidavits affected Government.

The acting Chief Justice's refusal to allow copies of the affidavits to be taken.

Advantage taken to draw again the attention of the Home Government and Parliament to the affairs of Hongkong.

Mr. Edwin James again moves House of Commons.

Accordingly, on the 6th March, Mr. Edwin James again drew the attention of the House of Commons to Hongkong grievances by asking for the production of all papers which were likely to be of service in a debate. The following were the terms of his motion:—

"Copies of all correspondence, or other papers, on the following subjects, or any of them:—

The resignation of the Justiceship of the Peace for Hongkong by Mr. Thomas Chisholm Anstey, sent in to the local Government on the 13th day of May, 1858:

His suspension, on the 7th day of August, 1858, from the Attorney-Generalship of the Colony of Hongkong, and from the Office of Counsel to the Superintendency of Trade in China :

The Case of the Queen *v.* Tarrant for Libel, tried at the November Sessions (1858) of the Hongkong Supreme Court (Criminal side) :

The Charge of alleged complicity of Mr. Caldwell, J.P. and Protector of Chinese at Hongkong, with Hongkong Pirates :

The Charges made against the acting Colonial Secretary (Dr. Bridges) with reference to the foregoing subjects, and also the Opium Farm Monopoly :

The Proceedings against Mr. May, Superintendent of Police at Hongkong, Mr. Tarrant, Registrar of Deeds there, and the Police Court Interpreter Tong Akou, and the dismissal of the Police Court Interpreter Assam, for having severally given evidence against the said parties, or any of them :

"And the Imperial Regulations (if any) by which the several Suspensions or Removals before mentioned were authorized."

These papers were duly produced on the 16th March, and, on the 21st of the same month, ordered to be printed by the House of Commons.*

The petition to the House of Lords by the Newcastle Foreign Affairs Association.

A petition was also presented to the House of Lords by the Newcastle Foreign Affairs Association relative to the 'piratical attack' of Tam Achoy and others. More than a year before, the condition of Hongkong had twice been brought before Parliament in consequence of the exertions of the petitioners. In the second instance, a petition, containing a list of charges of the most injurious character, not one of which had, up to this time, received any answer whatever, in either House, except "no information," was addressed to the Queen, and by the Queen sent to the Colonial Office with Her Majesty's express command to give attention to the same.

The condition of Hongkong twice brought before Parliament by the petitioners.

The Duke of Newcastle on the 'transactions at Hongkong which reflected little credit on all the parties concerned.'

As the Duke of Newcastle said "an enormous Blue Book had subsequently been published by the Colonial Office, in reference to all these transactions at Hongkong, *which reflected little credit on all the parties concerned.*" The petitioners alleged, and how truly may be judged by this admission, that this Blue Book confirmed every statement in their former petitions. Finding then, after the lapse of more than a year, the same offences continuing to be repeated by the same officials whom they formerly

* A notable fact in regard to Mr. Edwin James' motion was, that whereas in his first motion to a similar purport in April, 1859, (*antè* Chap. XXVI., p. 588) he had included 'the charges made against the Lieutenant-Governor of Hongkong (Colonel Caine) and his Chinese compradore, with reference to extortion and bribe-taking in the years 1846 and 1848 (item 6),' he now confined himself to those matters which he considered had not been yet or satisfactorily solved, regard being had, moreover, to the fact that the case of Colonel Caine against Mr. Tarrant for libel (*antè* Chap. XXIX., p. 605) had now solved most of the questions relating to Colonel Caine himself.

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accused, they now transferred the issue from the subordinates to the principals.

The petition of the Newcastle Foreign Affairs Association.

The following was the petition above alluded to presented by the Newcastle Foreign Affairs Association :

*To the Right Honourable the Lords, Spiritual and Temporal, of the United Kingdom of Great Britain and Ireland, in Parliament assembled.*

Humbly Sheweth :—

That your petitioners are informed that Tam Achoy (a Chinaman, a noted resident at Hongkong), Captain Baker (an English subject), and a number of American and European sailors recently made a piratical attack on the Chinese village Sun-ning near Macao, in which three Europeans and a number of others were killed.

That a steamer, flying the British flag, was chartered by Tam Achoy for this expedition.

That on Tuesday, February 21 of the present year, Tam Achoy, Captain Baker, and others, who were engaged in fighting, were brought to trial before the Supreme Court at Hongkong, charged with misdemeanour.

That the accused pleaded guilty, but made affidavits in which they put forward the fact in mitigation of punishment, that before starting on their expedition they consulted the Government of the Colony concerning it, through Mr. Caldwell, the Registrar-General and Protector of Chinese, and received no warning from the said Government to prevent their proposed expedition.

That to the truth of this statement the Registrar-General of Hongkong himself bore witness in an affidavit which he also made.

That, in consequence, no sentence was passed on Tam Achoy, Captain Baker, and the others.

That the acting Chief Justice, Mr. Adams, did withhold the above-mentioned affidavits, which had been read in open Court, when application was made to him for them for the purpose of publication.

That a newspaper at Hongkong, *The China Mail*, in reference to these circumstances, made, in February 2, the following statement :—

"The expedition against Sun-ning was only the natural development of the system of attacking alleged pirate fleets and villages with English gunboats, on very insufficient information as to the real facts of the case, and of interfering with Chinese quarrels which can be far better settled by the natives themselves. Mr. Caldwell was the official here best fitted to discriminate between pirates and others ; yet even he had the almost incredible stupidity to direct Captain Bythesea against Namtow, because of acts committed by a junk in the legitimate action of the Chinese Customs. The Namtow people came to Hongkong and engaged a lawyer to prosecute in this matter ; but they must have been bought off, for when everything was clear before them and legal opinion in their favour, they suddenly left the place, and gave up the prosecution."

That in February last year a petition, signed by the Mayor, on behalf of a public meeting of the inhabitants of this town, was laid before your Right Honourable House, praying for justice in respect to conduct similar to that

above recited on the part of the Registrar-General and other officials at Hongkong.*

That in June last year a petition to the same effect, signed by the Mayor, on behalf of another meeting of the inhabitants of this town, was presented to Her Majesty, to which Her Majesty was graciously pleased to reply on the 2nd of July that she had "commanded the said petition to be referred for the consideration of the Secretary of State for the Colonies."†

That in March of the present year in return to an address of the Honourable House of Commons, a volume of official papers relating to Hongkong was laid before your Right Honourable House, which papers confirm, to the fullest extent, the statements contained in the above-mentioned petitions.

That, nevertheless, no steps have been taken by your Right Honourable House to redress the grievances complained of; the consequence being the continuance of the customary state of things at Hongkong, as evinced by the circumstances of the above-mentioned trial for piracy of Tam Achoy and Captain Baker.

*That your petitioners attribute this state of things to the conduct of the late and present Secretaries of State for the Colonies, in neglecting Her Majesty's commands to give consideration to the complaints of Her Majesty's subjects; and, further, in upholding guilty officials and punishing only their accusers.*‡

Your petitioners, therefore, humbly pray your Right Honourable House to inquire into the aforesaid conduct of the Colonial Office, and to take such steps as to your Right Honourable House may appear necessary to vindicate the honour of the Crown and do justice.

And your petitioners will ever pray.

Signed on behalf of the Association,

GEORGE CRAWSHAY, *Chairman.*
ROBERT BAINBRIDGE, *Vice-Chairman.*
GEORGE STOBART, *Secretary.*

May 31, 1860.

Apathy of Home authorities relative to representations of Associations on Hongkong affairs.

The somewhat apathetic conduct of the Home authorities in giving attention to the earnest representations of those associations and other institutions interested in the welfare of Hongkong naturally gave rise to indignation, and the strong language used in the foregoing petition is therefore not to be wondered at. The persistent support given to Mr. Caldwell by the local authorities, which emboldened him all the more, naturally evoked the greatest distrust, having regard to the time which had already elapsed and the repeated complaints formulated, that anything would be done to get rid of him, or that such reforms would be carried out as the needs of society and administration demanded in the Colony.

The local support given to Mr. Caldwell.

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* See *antè* Chap. XXVI., p. 581.
† *Antè* Chap. XXVIII., p. 601.
‡ The words in italics are, of course, those which caused the Duke of Newcastle in the

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The Duke of Newcastle in the House of Lords.

His instructions to Sir Hercules Robinson.

Inquiry into charges by Mr. Anstey.

The Governor "cautioned against stirring up again all that mass of mud which encumbered society in Hongkong."

The discussion in the House of Lords.

On the 28th June a discussion took place in the House of Lords upon the petition. The Duke of Newcastle clearly showed what his instructions had been to Sir Hercules Robinson in regard to the charges raised by Mr. Anstey. He showed there had been no neglect. He had directed the new Governor to make an inquiry into the various charges raised by Mr. Anstey, "*cautioning him, however, against stirring up again all that mass of mud which appeared to have encumbered society in Hongkong.*" Hence probably the cautious manner with which the new Governor was proceeding with the many matters calling for his attention, and the withdrawal of Mr. Mercer's notice of motion in reference to the press of the Colony,* after the conviction and heavy sentence passed upon Mr. Tarrant, deemed apparently sufficient as a temporary warning to others and sufficient for all purposes at all events for the present.

The following was the discussion before alluded to, which clearly shows the 'evil reputation' then attached to the Colony:—

"*Earl Grey* presented a petition from persons in Sheffield and Newcastle, complaining that an officer of the local Government at Hongkong had been mixed up with a proceeding of so improper a character as a piratical attack on a Chinese village. The noble Earl said he knew nothing of the transactions adverted to by the petitioners beyond what had appeared in the newspapers, but he thought the state of affairs at Hongkong required serious consideration.

*The Duke of Newcastle* said he had as yet received no accounts from Hongkong of the particular attack stated in the petition to have been made; and had he been aware that the noble Earl intended to present the petition that night he would have inquired whether any despatches on the subject had been brought by the mail just arrived. He assured the House that there was not that neglect on the part of the Colonial Office which the petitioners—members of the Foreign Affairs Committees of Sheffield and Newcastle—supposed to exist because every determination of the Government was not communicated to them. [Laughter.] An enormous Blue Book had been printed by the Colonial Office in reference to all these transactions at Hongkong, which reflected little credit on the parties concerned, and careful inquiry had been instituted respecting them. On his appointment to the Colonial Office he found that his predecessor in office had nominated a new Governor for Hongkong, in consequence of the anticipated return of Sir J. Bowring. He, therefore, directed the new Governor to make an inquiry into the various charges raised by Mr. C. Anstey, cautioning him, however, against stirring up again all that mass of mud which appeared to have encumbered society in Hongkong. He had not yet received an account of the result of the inquiry prosecuted by that gentleman. He was bound to add, though with the greatest possible regret, that in no part of Her Majesty's Dominions was libel so rife and flagrant as in Hongkong. For men to libel one another in the most reckless manner seemed to have become the normal state of society in that island. There had been prosecutions for libel, some of which were successful, and some not successful, but he mentioned this to caution their Lordships against placing the same amount of credit in statements in Hongkong newspapers, unless authenticated by other circumstances,

as, he was happy to say, they were accustomed to place in statements published in English newspapers. [Hear, hear.] The inquiries into these charges had been neglected, and he hoped that those who were interested in the well-being and respectability of the society of Hongkong would further any efforts which he might make to redeem the Colony from the evil reputation which, in consequence of these transactions, attached to it. [Hear, hear.] Chap. XXXI. — 1860.

*The Earl of Hardwicke* said it was quite impossible that the Government could undertake to enter into correspondence with Committees on foreign affairs; but he was rather inclined to applaud these associations, he believed generally of artisans—at all events, they were artisans who formed a deputation from one of the committees on foreign affairs which waited on him. They took pains to read all the Parliamentary papers, and to instruct themselves, to the best of their ability, in foreign affairs. He believed they were extremely well-informed men, and he should be sorry if they imagined they were treated with indignity because the Secretary of State refrained from a correspondence upon subjects in which they took great interest. [Hear, hear.]"

The Duke of Newcastle on what had been done to purify Hongkong.

The discussion, it will be seen, referred more to the Foreign Affairs Associations established in Newcastle and elsewhere than to Hongkong, and could not therefore have failed to prove a very great encouragement to the members of those associations. Having a grave charge to meet, the Duke of Newcastle attempted to meet it by getting up a laugh against his accusers. The Duke of Newcastle was thus forced to explain what it was he had done to purify Hongkong.

Mutiny of prisoners in the Gaol.

Early in March the prisoners confined in the Victoria Gaol, through some dissatisfaction, mutinied, but by promptitude the riot was soon quelled and the mutineers punished.

The state of the Gaol.

The state of affairs in the Gaol at this time, mention of which has already been made in connexion with Mr. Tarrant's imprisonment, appeared to be even more detrimental to the interests of justice than it was objectionable on grounds of humanity.

The sentences of imprisonment passed in the Courts.

The sentences of imprisonment passed in the Courts of Hongkong had often been frightfully severe, and if, as appeared, criminals had so often to be released before their term of imprisonment had expired, the sentences of the Courts must have become a mockery, and punishment become so indefinite as to lose much of its terrors—so dependent on private judgment or caprice as to lose much of its proper judicial character. As matter of record, it is not therefore out of place to quote here what was said of the disgusting state of affairs prevalent in the Gaol, by the different officials having control of it so recently as in 1855, 1857, and 1858. Mr. Hillier, the late Chief Magistrate, on the 7th April, 1855, four years before Sir John Bowring left, gave a short account of the condition and work-

The disgusting state of affairs prevalent in the Gaol.

Mr. Hillier's account of the Gaol in 1855.

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ing of the Gaol. His allusion to the 'unnatural crimes' prevalent in the Gaol, the robbery committed by fellow-prisoners, and the 'unrestrained association' of the young in crime 'with scores of hardened criminals' cannot fail to give one at this period a full insight into the then prevalent state of the Gaol and the just complaints which were formulated in reference to that institution. Mr. Hillier's report must have acted as an incentive for the starting of a Reformatory, and no doubt the one subsequently started by the Roman Catholic Priesthood,* hereafter alluded to, however unsatisfactory in itself on various grounds, must have proved a blessing compared with the disclosures made by Mr. Hillier who wrote as follows :—

Unnatural crimes.

Robberies by fellow-prisoners.

Young criminals associated with hardened criminals.

The Reformatory started afterwards.

Mr. Hillier's report on the Gaol.

"At the present time there are no less than one hundred and three prisoners confined in one room. Their crimes vary from the most trivial misdemeanours to offences of the most atrocious nature. During the day these convicts work at associated labour on the roads or within the prison walls, but before and after hours of work, and during the whole of Sunday, they are locked up together in this one room, or are restricted to that and the adjoining yard without separation or supervision. At night the only check upon them is an Indian sentry at the east side of the Gaol compound, who if he chose may look through a grated aperture a few inches square and see by means of a light hung in the centre of the apartment some portion of the occupants, but many he cannot see at all; it is easy for any prisoner to escape observation by moving to such parts of the room as are not visible from this aperture. I am told that it was the firm impression on the mind of the late gaoler acquired from his daily opportunities of forming a reliable opinion, that unnatural crime was frequent among the inmates of this ward, and the Sheriff himself does not doubt that it is difficult for a newly-convicted offender to escape being robbed by his fellow-prisoners on the very first night of his transfer to this part of the prison. But be this as it may, the magnitude of the evils that result morally to the young in crime from unrestrained association with scores of hardened criminals, and the opportunity which such a state of things must present for the concoction of schemes of villainy to be executed as soon as liberty shall have been regained, are too obvious to require more than a passing notice."

Mr. Lyall's report in 1857.

In May, 1857, two years afterwards, Mr. Lyall, a visiting Justice, wrote the following :—

"The prison is so overcrowded, that it is impossible to conduct its routine as it should be."

The report of Messrs. Anstey and Rickett in 1858.

In January, 1858, Messrs. Anstey and Rickett, upon a visit to the Gaol in their capacity of visiting Justices, said :—

"We repeat our former observations upon the imperfect means of classification which the faulty construction of these buildings affords. If there should be any funds available for the construction of new public works, we earnestly draw the attention of Government to the above points."

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* See Volume II., Chap. XL., XLIX., and XCLII. See the regret expressed by Mr. Justice Snowden at there being no Government Reformatory.—Chap. LXXV., *infrà*, and Chap. LXXIX. as to Ordinance No. 19 of 1886.

And no doubt it was owing to the condition of the Gaol that Eli Boggs, the notorious American pirate, was released on the 12th April, 1860. He had been greatly borne down by illness from the time of his incarceration in July, 1857,* and it was not expected he would have lived much longer if kept in prison. On his release he was sent to America, but not before the master of one vessel at least had declined the pleasure of his company on board ship.

Eli Boggs, the American pirate, released from Gaol.

Cruelty in other forms was also frequent in the Gaol. Information reaching the Governor's ears relative to the death and burial of a Chinese prisoner named Lye Mooey Chie under suspicious circumstances, Sir Hercules Robinson, on the 28th June, had the body exhumed. The convict was a Chinaman who had been sentenced as a rogue and vagabond to a term of imprisonment and a couple of floggings. He died of dysentery and was buried in the usual manner. The deceased had several times complained of illness and inability to work. This was disbelieved, and he was flogged in consequence, besides being put on short rations and placed in solitary confinement. The case was one of extreme cruelty. The Coroner's jury accompanied their verdict with the remark that there ought to be a proper person attached to the Gaol as interpreter, thereby showing in what condition the inmates of the Gaol were situated in regard to the officers of that institution, who were ignorant of their language. The following was the verdict :—

Cruelty in other forms in the Gaol.

Suspicious death of Lye Mooey Chie. His body exhumed.

Had complained of illness and had been flogged.

No interpreter attached to the Gaol.

The verdict.

> The jury desire to express their indignation at the cruel usage the deceased met with in being twice flogged, put on half rations, and placed in solitary confinement while sick and under medical treatment. They also think there is great carelessness in conveying to the Gaol Governor the reports on the prisoners made by the Surgeon ; and that the punishment of flogging within the Gaol appears to be much too common.
>
> They also think there ought to be a proper person attached to the Gaol as interpreter.
>
> (Signed) R. SHERWOOD.
> H. TURNER.
> W. EMENY.

On the 3rd March Ordinance No. 1 of 1860, empowering the Governor to grant pardons subject to the condition of offenders leaving the Colony—a power heretofore exercised but doubted,—was passed. On the same day was passed another important Ordinance (No. 2 of 1860) relating to Jurors and Witnesses.†

Ordinance No. 1 of 1860.

Ordinance No. 2 of 1860.

Mr. W. H. Mitchell, the Assistant Magistrate and acting Chief Magistrate of Police, left for England on eighteen months' leave

Departure of Mr. Mitchell, assistant and acting

* *See* Chap. XVIII., *antè* p. 436.

† Upon the subject of Chinese oaths, see *antè* Chap. XII. § II., pp. 309-315, and Vol. II., Chaps. L. and LXXXII.

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of absence on the 15th March. It will be remembered that, on the resignation of Mr. Davies, he received the appointment of acting Chief Magistrate on the 1st June, 1859,* and he was now anxious to secure permanently the position he had been holding temporarily, though he was eventually disappointed in this expectation.†

Chief Magistrate, on leave.

Mr. Mitchell's career reviewed.

Mr. Mitchell, it may be mentioned, whatever his qualifications as a Magistrate, was an able man and had an extensive knowledge of Chinese affairs. The best review of commercial affairs in China that had yet appeared proceeded from his pen and was in the shape of a letter to Sir George Bonham.‡

Mr. Alexander, Registrar, appointed acting Chief Magistrate.

Mr. May, Marshal of the Vice-Admiralty Court.

In consequence of Mr. Mitchell's departure, Mr. Alexander, the Registrar of the Supreme Court, was appointed to act as Chief Magistrate in conjunction with his own duties, and Mr. May to perform the duties of Marshal of the Vice-Admiralty Court.

Departure of Mr. Parsons, solicitor.

Mr. Pollard appointed his law agent.

By the same steamer that took away Mr. Mitchell, Mr. Parsons, the solicitor, of 'amalgamation' fame,§ also left for England. He appointed Mr. E. H. Pollard as his 'law agent' during his absence. Mr. Parsons died in England many years after, at a ripe old age.‖

Mr. Parson's death.

Death of Mr. Newman, acting Harbour Master and Marine Magistrate.

Lieutenant Harris acting.

Lieutenant Thomsett, of the *Princess Charlotte*, acting.

Return of Mr. Inglis to duty.

In consequence of the death of Mr. Newman, acting Harbour Master, Lieutenant Harris, of the *Cambrian*, assumed charge of the department temporarily, but resigned office on the 16th March, on appointment as Commander of H.M.S. *Hesper*, when Lieutenant Thomsett, of H.M. brig *Princess Charlotte*, succeeded to the vacancy, and held the appointment until the return to duty of Mr. Inglis on the 27th November, 1860.

On the 17th March was read for the first time the draft of an Ordinance to amend the law relating to Cheques or Drafts on Bankers and to amend the law of false pretences. This Ordinance was subsequently passed on the 16th April and numbered 4 of 1860.¶ Further changes took place in the Judicial Department

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* See *antè* Chap. XXVIII., p. 600.

† See his retirement noticed in Vol. II., Chap. XXXVII.

‡ *See* Blue Book relating to China, 1854, p. 243.

§ *Antè* Chap. XXII.

‖ *Death.* On the 22nd October, 1891, at his residence, Rugby House, Worthing, Ambrose Parsons, solicitor, formerly of London and Hongkong, last surviving son of George Parsons, of Worthing, in his seventy-seventh year, after a few days' illness." *Press Notice.*

¶ See *antè* Chap. XXIX., p. 605.

on the 26th March owing to Mr. Masson, Deputy Registrar, going on eighteen months' leave of absence.

1860.

Mr. Frederick Sowley Huffam, acting clerk to the Chief Justice, was appointed to replace Mr. Masson, being himself succeeded by Mr. Thomas Turner until the return of Mr. Weatherhead, who, it will be remembered, had gone Home at the same time as Sir John Bowring on the 5th May, 1859.*

Ordinance No. 4 of 1860.

Mr. Masson, Deputy Registrar, goes on leave.

Mr. F. S. Huffam, acting Deputy Registrar.

The Governor, on the 4th April, appointed Mr. Adams, the acting Chief Justice, to be a member of the Executive Council. He was already a member of the Legislative Council, and by a strange coincidence on the 19th of the same month, doubtless when the sanction had been received, *The Government Gazette* published the approval of the Queen to his holding a seat in the latter Council. This was held to be an anomaly and no doubt it was wrong and quite contrary to the fundamental principles of the Constitution to have one and the same high officer, who likewise wielded the supreme judicial authority, intimately associated with the representative of the Crown, in both the Legislative and Executive Councils.

Mr. T. Turner, acting Clerk to the Chief Justice.

Acting Chief Justice Adams appointed a member of the Executive Council.

But the Governor, in the state of affairs then prevalent, was in need of a good adviser, and he certainly could not have had a more experienced and capable adviser than the acting Chief Justice, but the question arose as to what security there was that the future incumbents of those offices would be entitled to equal confidence? Human nature was not so perfect as to justify that he who wore the ermine should also legislate and execute the laws at the same time.

The Governor in need of a good adviser.

On the 15th April, Major-General Sir C. Van Straubenzee, Commander of the Forces, left the Colony.

Departure of Major-General Van Straubenzee.

On the 28th of the same month, the Letters Patent under the great seal, dated the 30th January last (1860), investing the Supreme Court of Hongkong with jurisdiction concurrent and appellate, in civil suits originating in Japan, were duly published. Mr. Kingsmill as acting Attorney-General displayed great energy in endeavouring to keep up with the times and improve the legislation of the Colony, and several important measures at this stage owed their introduction to him.

Letters Patent of the 30th January, 1860, investing the Supreme Court with jurisdiction in civil suits originating in Japan.

Mr. Kingsmill as acting Attorney-General.

On the 30th April the Legislature passed Ordinance No. 7 of 1860 extending to Hongkong "certain Rules and Orders of the Superior Courts at Westminster." These Rules and Orders were those in reality which were contained in the second schedule of Ordinance No. 5 of 1858, which formed the subject of

Ordinance No. 7 of 1860.

Ordinance No. 5 of 1858.

* *Antè* Chap. XXVIII., p. 595.

Chap. XXXI. 1860.

so much discussion at the time, so that in reality the credit for their introduction belonged to Mr. Anstey when Attorney-General, whatever else may have been said upon the subject at the time.*

Credit for the introduction of Rules and Orders of Superior Courts at Westminster belonged to Mr. Anstey.

Ordinance No. 8 of 1860 amending the law in relation to the grant and revocation of Probates of Wills and Letters of Administration was also passed on the 30th April.

Ordinance No. 8 of 1860.

Resignation of Mr. Dick, Chinese Interpreter to the Supreme Court.

The question of interpretation, or rather want of interpretation, was yet to suffer an enormous blow by the resignation early in May of Mr. Thomas Dick, the Chinese Interpreter to the Supreme Court, in order to take up the appointment of interpreter to the Commissariat Department of the Expeditionary Force, at a salary of £500 per annum. His knowledge of the Canton and Mandarin dialects was both extensive and valuable, and rightly it was considered a disgrace to the Colony that, after nearly twenty years of repeated complaints, nothing had yet been done to inaugurate a local system of educating interpreters out of Colonial resources,—a system which would certainly have avoided the disgrace brought upon the Colony and the service by the re-introduction of Mr. Caldwell, mainly owing to his knowledge of Chinese if not of *the* Chinese as well. After serving with the Expeditionary Force, Mr. Dick received the appointment of Deputy Commissioner of Customs at Canton.

Nothing yet done to inaugurate a system of educating interpreters.

Mr. Dick appointed Deputy Commissioner of Customs at Canton.

Ordinance No. 11 of 1860.

On the 10th July, Ordinance No. 11 of 1860, constituting a Marine Court of Inquiry in Hongkong, was passed.

Complaints against the press being excluded from the Legislative Council.

Well-founded complaints aganist the Press being excluded from the Legislative Council by the Governor were again reiterated. Such exclusion was justly considered a retrogade step on the part of Sir Hercules Robinson which would be sure to recoil on him sooner or later. Complaint was also made that nothing was being done towards the promised inquiry into the grievances of the Colony. Both the Governor and the new Attorney-General, Mr. Adams, now acting Chief Justice, had evidently been taught and believed that the Hongkong press was detrimental to the well-being of the place and that it should be *put down*. The Hongkong press, albeit open to some of the animadversions cast upon it on the score of violence, had on the whole deserved well, if not at the hands of officials, at least at those of the community. But for it, colonial reformers at Home,—such was the indifference of some of the leading men in the community—would have heard nothing of the many and enormous abuses and

* See *antè* Chap. XXIV., p. 542.

*crimes* which after having for so many years been openly perpetuated to the scandal of the name of the British Government in China by persons holding magisterial and other offices under it, were still allowed by an alarmed administration to enjoy the impunity on which they had so confidently relied. But for the Hongkong press, there can be no doubt at all that the Parliamentary Blue Book which was laid on the table of the House of Commons in April, 1859, and March, 1860, upon Mr. Edwin James' motion* for papers relating especially to the case of Mr. Caldwell, who had since become notorious throughout Asia, would never have been heard of or seen the light at all. It was therefore no matter of wonderment that agitation continued at Home for a full and searching inquiry into the disgraceful doings in Hongkong, in accordance with the pledges given to Parliament by two successive administrations.

1860. Nothing being done towards promised inquiry into grievances.

The Governor and Mr. Adams believed the press detrimental to the well-being of Hongkong.

The scandal attached to the British Government in China.

Mr. Caldwell notorious throughout Asia.

*The London and China Telegraph* of the 27th April, 1860, animadverted strongly upon the hollowness of these pledges and of the "unalterably-infamous administration of Sir John Bowring" in no stinted terms, as follows :—

*The London and China Telegraph* and the "unalterably-infamous administration of Sir John Bowring."

"……The hollowness of the now forfeited pledge of the Colonial Office that the appointment of a new Governor of Hongkong should be the occasion for a searching inquiry into abuses which had at length been spoken of in Parliament, after having become a public scandal in the land. What, indeed, could any new Governor do with these words before his eyes? It is now palpable that the pretence of inquiry at Hongkong was resorted to in order to stop that demand for inquiry in England which was beginning to make itself heard, and which, we rejoice to hear, will make itself heard again in connexion with the presentation of these papers to Parliament. One word to those intending to act in this matter. The evil in Hongkong is but a ramification of the evil, the root of which is in Downing Street. Mr. Caldwell protects Ma Chow Wong. Dr. Bridges protects Mr. Caldwell, Sir John Bowring protects Dr. Bridges, Sir E. B. Lytton protects Sir John Bowring, and the Government of which Sir E. B. Lytton was a member was afraid of Lord Palmerston. We know, upon the very best authority, that a consideration which weighed with the Government of Lord Derby in deciding upon the course which they should take in reference to the unalterably-infamous administration of Hongkong by Sir John Bowring, was a dread of being charged with taking the pretext of the Caldwell case to punish him for the bombardment of Canton! Considerations such as these open a field for reflection too vast for us to enter upon at present. We have only to repeat, let every effort be made to bring before Parliament and the Crown that conduct of Secretaries of State by which impunity is granted to the confederacy of British magistrates with pirates, and punishment awarded to the denouncers of these monstrous practices, on such charges as 'fomenting discord in a small community.' We urge this for the sake of England, but we also urge prompt action on account of pressing circumstances at Hongkong."

It was not therefore to be supposed that such abuses as had been disclosed would be tolerated, and on the 10th May the following letter was forwarded through its chairman by the

* *Antè* Chap. XXVI., p. 588, and *antè* Chap. XXXI., p. 638.

Chap. XXXI.

1860.

Letter from the Foreign Affairs Association to the Duke of Newcastle.

Protest against Mr. Anstey's treatment as compared with that dealt out to Dr. Bridges and Mr. Caldwell.

The tribute paid to Mr. Anstey.

Foreign Affairs Association to the Duke of Newcastle protesting against Mr. Anstey's treatment as compared with that dealt out to Dr. Bridges and Mr. Caldwell, who, they argued, ought both to have stood their trial at the Bar of justice. The tribute paid to the "extraordinary ability, undaunted courage, unswerving perseverance, and unimpeachable honour and honesty of Mr. Anstey," it will be admitted, was no more than he richly deserved, for, in truth, he must have been a terror to evil-doers in Hongkong:—

"* * * * *

The voluminous 'Papers relating to Hongkong' recently presented to Parliament have been read and considered by this Committee, and I am requested to communicate with your Grace thereupon. The Committee have had no communication whatever with Mr. Anstey, nor have they any personal knowledge of Sir J. Bowring, with whom, however, they have communicated since his return to England, and whom they have convicted of falsehood on another subject. They cannot, therefore, defile themselves with any further notice of him than this. The Committee find it recorded in a despatch from Mr. Under-Secretary Fortescue to Mr. Anstey, dated July 26th, 1859, and printed at p. 444 of the papers, that your Grace, after considering the case, concurred in the decision of Sir E. B. Lytton, dismissing Mr. Anstey from office. The Committee are wholly unable to perceive the justice of this decision. In their judgment it is a very grave and serious injustice, and can only be attributed to your Grace not having read the evidence contained in the papers. It is, of course, impossible within the limits of an ordinary letter to give a full and clear statement of the whole case. The Committee, therefore, confine themselves to three of its main features. At pp. 12, 13 of the papers is the report of two Magistrates who had made an investigation into the conduct of Dr. Bridges, acting Colonial Secretary, member of the Legislative and of the Executive Councils of Hongkong. In that report, mild though it is compared with his offence, they find him guilty of grave misconduct.* No one who reads the whole of the evidence can doubt for a moment that he was guilty of an offence for which, if justice had been done, he ought to have been indicted, along with the Chinaman who had bribed him, for conspiracy. Instead of that he continued to fulfil his public offices, and to perpetrate other crimes. At pp. 36, 37, and 38 of the papers appears the report of a Commission appointed to investigate the conduct of Mr. Caldwell, J.P., Registrar-General, Protector of the Chinese, and Licenser of Brothels. That report, although far short of meeting the justice of the case, as developed throughout the whole of the evidence, does find Mr. Caldwell guilty of very grave misconduct, and he, too, ought to have taken his place as a criminal at the Bar of justice.† Instead of that he still continues to exercise his offices as an important servant of the Crown. At p. 362 of the papers, is the verdict of the special jury in the case of the Queen *v.* Tarrant. In the opening of that case the counsel for the Crown said that Sir J. Bowring and Dr. Bridges felt they were on their trial. The verdict of the jury found them, in effect, guilty of a corrupt and damnable trick to defeat the ends of justice—this, too, without hearing a word of the defence.‡ A perusal of the evidence shows that no other verdict was possible. These three remarkable and signal triumphs of justice were owing to the extraordinary ability, undoubted courage, unswerving perseverance, and unimpeachable honour and honesty of Mr. Anstey. Yet he is dismissed, and the criminals enjoy public favours."

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* See the Report referred to, *antè* Chap. XXI., p. 473.
† See the Report, *antè* Chap. XXIII., p. 506.
‡ See *antè* Chap. XXV. § I., p. 561.

As regards Dr. Bridges the following attack alone which Mr. Anstey openly made against him to his face in the Council Chamber, when the Caldwell Commission was sitting, which was never resented or repudiated, will bear repetition :—

The attack made by Mr. Anstey against Dr. Bridges in the Caldwell Inquiry never resented or repudiated.

"No man has ever charged me with having reserved for a more convenient season my defence against imputations, whensoever, wheresoever, and by whomsoever cast, upon my fair fame and credit. Nobody has charged me with having patronized and protected against the sharp edge of the law the iniquities of subordinates, whom it was convenient to count amongst my satellites. Nobody has charged me with having, either in person or by deputy, dissuaded or made the endeavour to dissuade nervous, doubting, unwilling witnesses from appearing before a Court like this; a court of honour, if the reputation of the person accused be concerned; a court of great political import, if the good of the community, the credit of the Government, and the responsibility to opinion and to law, of every servant of the State, from His Excellency down to Mr. Grand-Pré, be matter of public concern. Nobody has charged me with encouraging the accused by precept or by example to raise technical, quibbling, pettifogging objections, to the reception of evidence before such a Court, and so to base his hopes of immunity not upon the moral conviction of his innocence, but upon the difficulty of wresting from the grasp of an unwilling Government the legal proofs of his guilt. And finally, nobody has accused me, much less convicted me, of seeking my own escape from public odium and contempt, in the destruction of public records of which I was the custos, and which contained the damning evidence of my own complicity, or that of my subordinates, with thieves, resetters, murderers, and pirates."

The renewed agitation therefore on the part of the Foreign Affairs Association proved of some utility; it was the cause of immediate instructions being issued to the Governor to institute an inquiry into the abuses complained of, as hereinafter referred to.

The renewed agitation the cause of immediate instructions being issued to institute an inquiry.

In this connexion and in reference to Mr. Caldwell especially, whose name was doomed to come up ever and anon in connexion with irregularities of one sort or another, doubtless through his having so many 'irons in the fire,' it may here be mentioned that at the Criminal Sessions held on the 21st February, 1860, a Chinaman named Sung A Hing was sentenced to four years' imprisonment for coolie-kidnapping. This case had formed the topic of much public discussion in which Mr. Caldwell's name got unfavourably mixed up and was, of course, strongly commented upon, severe strictures being passed upon him,* and he being deliberately charged by a local paper with *extortion* and *perjury*. Upon this Mr. Caldwell brought an action for libel against the editor of the paper in question, *The Daily Press*, which was heard on the 18th July, when, finding himself unable to substantiate the charge, the defendant withdrew his plea of justification, denying that he meant to imply what he

Mr. Caldwell's name doomed to come up ever and anon.

Conviction of Sung A Hing for coolie-kidnapping.

Mr. Caldwell's name unfavourably mixed up.

He is charged by a local paper with extortion and perjury, and brings an action for libel against the editor.

* See *Daily Press*, 8th March, 1860.

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had written. The case is all important as showing that the acting Chief Justice in his remarks, while disposing of the matter, knew that an inquiry was pending into the conduct of Mr. Caldwell and others and that once for all the scandal attached to Hongkong would be thoroughly scrutinized. Mr. Adams accordingly in passing remarks upon the defendant's retractation said, that "*whenever an inquiry would be instituted into Hongkong grievances, it would be before a tribunal where neither quirks nor quibbles would be permitted, but where the most searching investigation would take place,*" therefore foreshadowing the inquiry ordered by the Duke of Newcastle forced on practically by the "Foreign Affairs Association" as may be judged by the following Government Notification which appeared just a week after the disposal of the case above mentioned :—

Plea of justification withdrawn by the editor.

Acting Chief Justice implies that an inquiry is pending into the conduct of Mr. Caldwell and others.

'A tribunal where neither quirks nor quibbles would be permitted.'

The Government Notification announcing inquiry into alleged abuses before the Governor-in-Executive Council.

## GOVERNMENT NOTIFICATION.

In compliance with instructions received from His Grace the Duke of Newcastle, Her Majesty's Secretary of State for the Colonial Department, directing that "an inquiry should be instituted into the abuses which have been alleged to exist in the Civil Service of Hongkong generally, and, especially, into the alleged tampering of some of the subordinate departments in that service with the malversation, corruption, and piratical practices, of part of the Chinese community in or frequenting the Colony," His Excellency the Governor has determined that such inquiry shall take place before the Governor in Executive Council who will sit for that purpose in the Council Chamber on the 13th day of August next, at noon, and on such subsequent days as may then be determined on.

All persons capable of giving information in furtherance of the proposed investigation are desired to attend the sittings of the Council, which will be held with open doors.

By His Excellency's Command,

L. D'Almada e Castro,
*Clerk of Councils.*

Victoria, Hongkong, 28th July, 1860.

The beginning of a new era.

This was to be the beginning of a new era in Hongkong, and that the inquiry was to be held with open doors was a departure from the system hitherto adopted by Sir Hercules Robinson. The notification, it may be added, was also published in Chinese.

The notification also published in Chinese.

Thirty-three more names added to the Commission of the Peace.

Previous to this, on the 7th July, 1860, the Government added thirty-three more names to the Commission of the Peace, comprising officials and other members of the community.

Departure, resignation, and death of Mr. J. Jardine, M.L.C.

On the 9th July Mr. Joseph Jardine, member of the Legislative Council, proceeded to Europe on twelve months' leave of absence through ill-health. He afterwards resigned his seat and died in Scotland on the 11th January, 1861. On his resignation on the 10th December, 1860, Mr. Alexander Percival was nominated in his stead, and on the same date Mr. Angus Fletcher

was also appointed a member of the Legislative Council in the room of Mr. George Lyall, who had resigned his seat on leaving the Colony. These nominations were subsequently approved of and published in the Colony on the 24th June, 1861.

Mr. A. Percival nominated, *vice* Mr. Jardine.

Mr. A. Fletcher, M.L.C., *vice* Mr. G. Lyall, resigned.

Heretofore the Governor had had no power to remit penalties other than those due to the Crown, in consequence of which several cases of extreme hardship are recorded, notably that of Mr. Tarrant, the editor of *The Friend of China*, who was imprisoned for Dr. Bridges' bill of costs in *the criminal suit against him* for libel until it was paid,* and it was no doubt in consequence of that infamous matter that Ordinance No. 14 of 1860 was passed on the 17th August, empowering the remission of such penalties.

Governor heretofore no power to remit penalties other than those due to the Crown.

Dr. Bridges' bill of costs against Mr. Tarrant.

Ordinance No. 14 of 1860.

As to the press, steps were without further delay taken to 'purify the atmosphere' of the Colony, both the Governor and Mr. Adams, who had then been confirmed as Chief Justice, being prominent speakers on the occasion of the passing of the enactment relating thereto, at a meeting of the Legislative Council, held on the 17th November, 1860, showing the interest they mutually took in the matter and that both were acting under instructions. Their speeches, especially that of the Chief Justice, will be read with the greatest interest. Accordingly, at the meeting of Council before mentioned—the Governor, the Chief Justice, the Surveyor-General, and Messrs. Lyall and Dent being present,—the Governor, Sir Hercules Robinson, in laying upon the table the draft of an Ordinance "to amend the law relative to Newspapers in Hongkong," spoke as follows:—

The press in the Legislative Council.

Speeches of the Governor and Mr. Adams.

Mr. Adams confirmed as Chief Justice.

The Governor and Chief Justice acting under instructions.

His Excellency said that the idea of this enactment had struck him some months since, and that he had conferred with the Chief Justice upon the subject, who fully concurred. A despatch had consequently been framed to the Secretary of State, who likewise concurred in the expediency of the measure. The only law applicable to the press of the Colony at present was Ordinance No. 2 of 1844. This was one of the first enactments passed after the cession of the Colony, and clearly indicated hasty legislation. By that Ordinance, the press was released from all restraint whatever. The proprietor of a newspaper has now simply to go before a Magistrate and declare his place of abode. The object of the present Ordinance was in no way to interfere with the free action of a legitimate press; on the contrary, its aim was to assimilate the press of the Colony with the most respectable press in the world, namely, the press of England. There, where the press was notoriously free, restraints were placed upon it to avoid licentiousness and other evils, of a far more stringent nature than the Ordinance now laid upon the table provided. The law in England compelled the proprietor of a newspaper to enter into a personal bond of £400, with two sureties for a like sum, and it extended even to pamphlets. In the Ordinance now submitted, this amount of security had been reduced to £250. This had been done lest it should be thought the administration of the Colony sanctioned excessive bills

The Governor's speech. 'The law of England was the law of the Colony from the time of its cession.'

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* *Antè* Chap. XXIX., pp. 622-624.

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of costs. The Council would observe that as the law of England was the law of the Colony from the time of its cession, the Act which prevailed in England regarding the press would also prevail here, had not the Ordinance No. 2 of 1844 been enacted. There surely was no reason why the press of this Colony should be exempted from the law made and provided to restrain the press of England! Yet to show that he, the Governor, had no desire to oppress or annoy the press of Hongkong, the sureties existing in England had been materially reduced. The idea in framing the Ordinance now submitted was, that the sureties would check an editor in any violent course he might, when unrestrained, feel justified in resorting to, and, to use the Duke of Newcastle's own words, to put a stop to "*the reckless libels which have poisoned the very atmosphere of the Colony.*" *

His Excellency whilst upon this topic would extend his remarks to another branch of the same subject. The Government of this Colony had repeatedly been placed in a false position by the practice adopted in actions for libel. A party libelled had hitherto applied to the Magistrate for a summons—a committal to the Supreme Court as if for misdemeanour was the necessary result, when the matter would fall into the hands of the Attorney-General. Not only in the Colony, but abroad, this had placed the Government in an entirely false position, and it had actually occurred more than once that odium had been cast upon the administration for thus apparently promoting actions which they really disapproved of. In future this practice should be discontinued, and the Attorney-General would not again prosecute in a libel case *ex officio*, unless he appeared on behalf of the Government. A party libelled must sue for damages, and the Ordinance now before the Council would secure to such persons the payment of costs at all events.

The Chief Justice's speech.

The Governor having concluded his speech, the Chief Justice said he wished to make a few remarks, which he proceeded to do as follows:—

He entirely concurred in all that His Excellency had said, and should give the Ordinance his cordial support. Connected as he had been with the press in early life, he would be the last person to sanction any measure which might tend to harass or restrict the full and ample development of a free press. No one could place a higher value upon that institution than he did, nor give a wider latitude, within the bounds of propriety, for the action of the press in descanting upon the public acts of public men. He thought the present time a very happy one to introduce the measure—as far as he knew, all was peace at present with respect to libels, and therefore no improper motive could possibly be imputed to Government in pressing the enactment. He had been deeply grieved to find that the Government of this Colony had been so prominently placed in the false position alluded to by His Excellency—and he, the Chief Justice, must admit that it was a most natural conclusion for the public to arrive at, when they saw the Attorney-General prosecuting, to suppose that the Government promoted the suit. He, the Chief Justice, would further state that, in so far as his feelings were concerned, it was a most disagreeable duty to pass sentence on an editor of a paper for libel. The jury were, in his opinion, far better judges of the damages to be accorded, and it was most desirable that the sentence should be left to them. He felt confident that the Ordinance now submitted would work for good—doubtless there had been a manifest improvement in the objectionable tone of the local press, and he hoped and thought that whenever any one of the editors allowed his feelings to run away with him, as had hitherto repeatedly been the case, the sureties provided by the Ordinance now submitted would restrain such editor.

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* *Antè* Chap. XXIX., p. 622.

Besides, the Ordinance acted in two ways—it protected the press against low adventurers, and it protected the public as well. In country towns in England, when party spirit ran high, malevolent men, excited by envy or disappointment, used to be in the habit of starting ephemeral and scandalous publications, simply as vehicles of malignity for their own passions. Price was no object; they were sold in market-places for a song, and became such a pest to society, that the enactment now in force in England had to be made to restrain them. As His Excellency had said, the law as it stands in England was far more stringent than the Act now before the Council. In like manner men of low character might come to this Colony, and almost without a penny, start a low paper to the great detriment of the respectable portion of the press, and then when a party maligned sued the editor and obtained a verdict, no effects were available to levy on. The Ordinance before the Council remedied all this, and whilst it secures a party suing moderate costs, it does not provide for an excessive amount. None of the newspapers now in the Colony could have the smallest difficulty, the Chief Justice felt sure, in obtaining the required sureties, and he could not conceive how one word could be raised against the proposed Ordinance. He did hope, and think too, that an improved tone would in future characterize the Hongkong press. *He expressed his unqualified disapproval of a prosecutor in a libel case retaining the whole Bar,** and he thought that the plan named by the Governor of disallowing the public services of the Attorney-General to private parties, would, considering the limited Bar of the Colony, tend to remedy the evil.

Ordinance No. 16 of 1860.

The Ordinance was then laid upon the table, and on the 30th November was passed and numbered 16 of 1860.

Mr. Caldwell or 'The Civil Service Abuses Inquiry.'

The members of the Committee.

The Caldwell Inquiry or, as it was called, the Civil Service Abuses Inquiry, appointed in July last began its sittings as announced on the 13th August, 1860, and sat frequently, its meetings lasting considerably over the year. The members of the Committee consisted of the Governor, Sir Hercules Robinson; Mr. Mercer, the Colonial Secretary; Colonel MacMahon, Commander of the Forces; Colonel de Saumarez, and Mr. Adams, then acting Chief Justice.

Chief Justice Hulme pensioned.

Intelligence that Chief Justice Hulme had succeeded in obtaining a pension and that his leave had thereby come to an end was confirmed in August this year. When the position was originally offered to him he had been given the choice of one stipend with a pension or an increased one without it. He chose the latter at £3,000 per annum, and therefore had no claim to a pension at all,† and after taking "repeated leave of absence, and by clinging so long as he possibly could to the post which his health but too often disabled him from filling, to the great detriment of the public service, yet," adds an exponent of public opinion at that time, "he still found himself a beggar and so

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* The Chief Justice doubtless had in mind the case of Colonel Caine *v.* Tarrant for libel (Chap. XXIX., *antè* p. 623, and also Chap. XXX. § I., p. 628) wherein the plaintiff had retained the whole Bar as against the defendant who had thus no counsel.

† See *antè*, Chap. I., p. 43.

Chap. XXXI. set up the claim for a pension." The paper continued thus, in reference to Mr. Hulme:—

1860.

His career reviewed.

"Of course, the grant to a man of his age is a subject that few men like to carp at.....Mr. Hulme was neither a bad man nor a corrupt judge. Still he was severe to a degree, and as unjust as severe. The Hongkong Gaol has still many living monuments of his cruelty, the sentences of hundreds having been mitigated. We are happy to find that both the Governor and the acting Chief Justice have been quietly extending mercy to many of the victims, and we hope that the Gaol may soon be purged of such scandal to our institutions as Mr. Hulme's sentences present. Indolence with him was carried beyond a failing; it was a positive vice."*

That Chief Justice Hulme's sentences were at times severe is undoubted, and that past Governors had mitigated some of his sentences on the score of severity is also but too true, but on the other hand the times in which he lived in Hongkong, when undoubtedly severity was a necessity, is a matter which can never be overlooked in judging of his career in the Colony; nor must it escape notice that the presumed writer of the above paragraph, Mr. Murrow, the editor of *The Daily Press*, was himself a 'victim' of Mr. Hulme in that he suffered six months' imprisonment, besides paying a fine of one hundred pounds, for a gross libel on Sir John Bowring.†

'He was a very good Judge'.

*On the whole, he was a very good Judge*,‡ and this the legal practitioners and community all agreed in holding.

His dilatoriness.

During the latter part of his career, owing to constant illness and infirmity of body, Mr. Hulme had begun to exhibit signs of dilatoriness, never taking the Bench before noon and at times at one o'clock in the afternoon.§

Pending reforms in Hongkong probably induced the grant of the pension.

Undoubtedly having regard to the state of affairs in Hongkong and the renewed applications for a pension by Chief Justice Hulme and his determination to remain in office so long as he was denied one, the Home Government decided to treat him liberally (by which fact his services, it may be said, met with full recognition) and the authorities were thus enabled to effect their purpose with respect to pending reforms in Hongkong, by confirming Mr. Adams as Chief Justice, who, together with the new Governor, were now in a position to take a more independent view of things in general. Hence undoubtedly the appointment of Mr. Adams as acting Chief Justice on his arrival from Home, under instructions from the Secretary of State.

The pension.

The pension allowed Chief Justice Hulme was the high one of £1,500 per annum. As may be remembered Chief Justice

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* *The Daily Press*, 17th April, 1860.
† Regina *v.* Murrow, *antè* Chap. XX. § II., p. 469.
‡ *The China Mail*, 25th August, 1859.
§ See *antè*, Chap. XXIX., p. 604, and reference there given.

Hulme arrived in the Colony on the 7th May, 1844, and went on his last leave on the 23rd April, 1859, having thus served the Colony for nearly sixteen years. He was never knighted, but in those days Chief Justices and even Governors were not always knighted as they are now. Mr. Hulme did not long live to enjoy his handsome pension, as he died on the 1st March, 1861, at Brighton, in the sixty-sixth year of his age.* Chap. XXXI. 1860. Chief Justice Hulme's death.

The same mail that brought the news of Mr. Hulme's retirement conveyed the confirmation of Mr. Adams, the Attorney-General and acting Chief Justice, to the Chief Justiceship of the Colony, when the following notification appeared :— Notification of appointment of Mr. Adams as Chief Justice.

It is hereby notified that Her Majesty's Warrant has been received directing the appointment of William Henry Adams, Esquire, as Chief Justice of the Colony of Hongkong.

The Honourable Chief Justice Adams has been sworn into office accordingly.

By Order,

W. T. MERCER,
*Colonial Secretary.*

Colonial Secretary's Office,
Victoria, Hongkong, 25th August, 1860.

The Chief Justice's salary, however, had been reduced to £2,500 per annum,† and the hope was expressed that Mr. Adams "would discharge his duties with the same satisfaction to the community as Judge Hulme."‡ On his confirmation as Chief Justice, Mr. Adams re-appointed Mr. Huffam, the acting Deputy Registrar, as his clerk, in which position the Governor also nominated him on the 1st December, on the resignation of the titular officer, Mr. Alfred Weatherhead, who proceeded to England. Salary of Chief Justice reduced. Mr. Huffam, Clerk to the Chief Justice, *vice* Mr. Weatherhead.

The Chief Justice, having been in poor health, left for Shanghai on the 8th October on one month's leave, returning to the Colony on the 7th November. Chief Justice Adams goes to Shanghai on sick leave.

Advantage was taken of this, to comment upon the inadvisability of having reduced the Chief Justice's salary. £3,000 a Comments on inadvisability of reducing the

* The following press notices relating to the family of the first Chief Justice of the Colony, compiled in the course of reading, are here inserted as deserving of record :—

(1.) *Death.* On the 24th November, 1876, at Brighton, Henry Walter Hulme, younger son of the late Chief Justice Hulme, of Hongkong.

(2.) *Death.* On the 25th May, 1877, at Brighton, Eliza, relict of the late John Walter Hulme, Chief Justice of Hongkong, China.*

(3.) *Marriage.* On the 20th May, 1886, at Shireoaks, near Worksop, by the Rev. G. Osborne, John James Hulme, son of the Honourable John Walter Hulme, late Her Majesty's Chief Justice of Hongkong, to Mary Elizabeth Browne, of Uckfield, only daughter of the late Peter Browne, of Bath and Macclesfield.

† *See* Schedule A of Ordinance No. 13 of 1860.

‡ *China Chronicle*, 23rd April, 1860. This is inserted to show the general esteem in which Chief Justice Hulme had always been held in Hongkong. See also the graceful allusion to him by Chief Justice Smale as "a great man of the past."—Vol. II., Chap. LX.

* This lady was a daughter "of the celebrated Joseph Chitty"—see *ante* Chap. II., p. 18 *n*.

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year and a retiring pension was considered no more than fair compensation for the services of a first-rate lawyer exercising jurisdiction, moreover, over the Consular Courts, in a trying climate like Hongkong. Whilst Mr. Hulme thought a month's vacation in the year for the Court sufficient, Chief Justice Adams was of opinion that four months' vacation would be by no means too much, and it was felt that the question of the necessity for the appointment of a Puisne Judge to adjudicate upon small debts would not much longer be delayed.

Chief Justice's salary.

Jurisdiction over Consular Courts.

Chief Justice Hulme and Chief Justice Adams on the Court's vacation.

The necessity for the appointment of a Puisne Judge.

The records show the dismissal at this period of Mr. Clifton from the Shanghai Police Force on charges indicating systematic fraud and extortion. He had previously been in the Hongkong Police Force,* and his dismissal at a time when an inquiry was being held into the conduct of a late brother-officer of his, Mr. D. R. Caldwell, was rather a strange coincidence.

Dismissal of Mr. Clifton from the Shanghai Police Force.

Mr. Thomas J. Callaghan,† barrister-at-law, the Chief Magistrate in succession to Mr. Davies who had resigned office, arrived in the Colony on the 25th November, 1860, from England and was duly gazetted the next day.

Mr. T. J. Callaghan appointed Chief Magistrate, *vice* Mr. Davies.

His arrival.

At the December Criminal Sessions, a Malay seaman named Abdullah was sentenced to death for the murder of a tindal on board the ship *Tory*. He underwent the extreme penalty of the law on the 2nd January, 1861, "the scene," it is recorded, "being denuded of all those human acts of mismanagement which have hitherto characterized executions in this Colony."

Conviction and execution of Abdullah for murder.

A proclamation by the Earl of Elgin, British Ambassador in China, relative to a Convention and Treaty of Peace with China, with tariff and rules dated the 26th June, 1858, and ratified on the 24th October, 1860, was duly published on the 11th December.

Convention and Treaty with China of the 26th June, 1858.

As regards crime during the year, two murders committed by Chinese burglars in Jervois Street, on the persons of Police Constables Ado Antonio da Rocha and Joaquim Maria, while in the execution of their duty, early in the morning of the 31st May, remained undetected, notwithstanding the large reward of $500 offered by the Government for the capture of the perpetrators of the crime.

Murder by Chinese burglars of P.C. Rocha and J. Maria

Perpetrators undetected.

The year concluded with an interesting domestic event in

Marriage of Chief

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* See *antè* Chap. XII. § I., p. 293.

† Callaghan, Thomas J.—Called to the Irish Bar, 1854; educated at Trinity College, Dublin, took honours in classics; held the appointment of Barrington Lecturer on Political Economy to the Dublin Statistical Society; was counsel to the Attorney-General for Ireland." *Colonial Office List.*

the Chief Justice's family, namely, the marriage of his eldest daughter who had accompanied him to Hongkong.* Chap. XXXI. 1860.

Justice Adams' eldest daughter.

It is impossible to peruse the records embodied so far without concluding that they read more like a romance than actual facts,—a romance in the time of Sir John Bowring more particularly,—upon which a play might successfully be founded, so unlikely do the scenes and personages represented appear to have been real factors or actors.

Conclusion.

Author's comments.

At this period, however, the Colony may be said to be rising from almost a state of chaos to something approaching order. The officials, who from the earliest days had been associated together, and who with their friends had long formed such ties of comradeship as to be unable to discover the errors of their own ways, were bent, in spite of good or evil report, to support each other's doings, the one deviating from this course, however, rightly as, for instance, in the case of Mr. May as regards Mr. Caldwell, meeting with almost disastrous consequences to himself. Such, indeed, was the case at all events during the administration of Sir John Bowring, and hence undoubtedly the origin of the irregularities recorded and the beginning of the end of the 'happy family' administration on the advent of Sir Hercules Robinson and of Mr. Adams.

With Mr. Anstey's arrival it seemed as if the form of Government prevalent had suffered a mortal blow, for it was impossible for one of his reforming spirit, of his character, talent, and abhorrence of that corruption which he found so rife in the Colony, to stand by and allow the irregularities which stood out so prominently before him to go on unchecked, however misdirected his energies may have been at times. It was probably due to his tenacity of purpose that Mr. Anstey met with the opposition he did from the officials who had before his arrival been accustomed to the easy system of non-interference which undoubtedly was the cause *a maxima ad minimis* of all the troubles in Hongkong.

Although, as is seen, Mr. Caldwell was still at this period holding the honourable and important office he did in the public service, the authorities until this, under positive instructions, deeming it right to proceed slowly so as not 'to stir up the mud,'† the next volume will show his forced disappearance from the scene of the troubled elements, like his old friends

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* *Marriage.* At the Cathedral, Hongkong, on the 20th December, by the Reverend J. J. Irwin, M.A., Colonial Chaplain, assisted by the Reverend J. H. Gray, M.A., British Consular Chaplain at Canton, Alfred Fincham, Esq., of Canton, to Ann Maria, eldest daughter of the Honourable W. H. Adams, Chief Justice of Hongkong."—This gentleman, however, died in London on the 1st May, 1862, his will being proved on the 31st July, 1863, in the principal Registry of Her Majesty's Court of Probate.

† *Antè* p. 642.

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and supporters, Colonel Caine and Dr. Bridges, to the undoubted advantage of the Colony.

The other matters have received sufficient attention to need no recapitulation or repetition. They will be fresh in the minds of the reader. As the Colony advanced, so did its laws to meet the necessary exigencies of society. The all-important question of interpretation and the improvement in the Gaol system were matters, although still in their infancy, yet meeting with such consideration as could be devoted to them, having regard to the difficulties in the way, and as this work progresses the gradual steps taken by the Executive on those points will be found duly noticed.

In regard to the Police Force, the largest in the world perhaps compared with population, the elements of which it was composed were always and will be, in such a place as Hongkong, a source of considerable difficulty and anxiety, although reforms were, even at this period, already perceptible. That the Spaniards were originally correct in including Hongkong amongst a number of islands called 'Ladrones' or thieves, has been demonstrated from the outset, and from year to year, until this stage of the work, innumerable cases of piracy, murder, or robbery occurred, to the outrage of our laws and the administration of justice.

At first, when dealing with pirates and other Chinese criminals, English law with its peculiar provisions and precedents often proved to be the friend of the criminal; it afforded loopholes through which escape could be and was made, and these persistent defiers of English authority found themselves by a ludicrous combination of facts in a position to laugh at detection or conviction, while almost instant death or something akin would have probably followed at the hands of their own authorities. Hence the impunity that was afforded by English law, and the very mild treatment delinquents experienced both before and after trial and condemnation. An impression had actually existed among the Chinese—tantamount to a feeling of ridicule or incapacity for dealing in a prompt way with either murderer, robber, or pirate. But in this, as in other respects, the Government gradually adapted itself to the requirements of the place and, therefore, to the Chinese, whose Criminal Code recognizes no legal technicality, and who, by this time, by their knowledge and experience of our law, had now been taught the justice of our beneficent rule to an extent so obvious as not to require being dilated upon.

END OF VOLUME I.

# GENERAL INDEX

TO

# VOLUME I.

# GENERAL INDEX

TO

## VOLUME I.


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